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Minor Practicks,

OR, A

TREATISE

OF THE

SCOTTISH LAW.

Compoſed by that Eminent Lawyer,

Sir THOMAS HOPE of *Craighall*,

Advocate to His Majeſty King *Charles* I.

To which is ſubjoined,

A DISCOURSE on the Riſe and Progreſs of the Law of SCOTLAND:

AND

An Alphabetical Abridgment of the ACTS of SEDERUNT, from the RESTORATION, to this preſent Year.

EDINBURGH,

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To the Right Honourable,

Sir WALTER PRINGLE
Of *NEW HALL*,
One of the Senators of the College of Juſtice;

My LORD,

SINCE ſo few of our Lawiers have left us any of their Works on the Subject of their Profeſſion, it is matter of ſome Surpriſe that this ſmall Treatiſe, which has in all Times been ſo univerſally eſteemed, ſhould have lay'n ſo long in Manuſcript, and that none of the *College of Juſtice*, in the Courſe of a Century, ſhould have obliged the World

with a *Publication* of it. I thought therefore, that it fell naturally enough to my Share, as *Profeſſor of the Municipal Law*; ſince none of the *Faculty* had hitherto given the Publick that Satisfaction.

As I have ſequeſtred my ſelf from the more active Part of the Law, that I might give all my Time to the Duties of a Profeſſion to which I am particularly called, being the firſt in that Province in this Univerſity; It may perhaps be expected that I ſhould publiſh ſomewhat of my own upon the LAW of SCOTLAND; which in good Time I hope to be able to do: But till ſome more Experience and Knowledge in the Buſineſs of my Profeſſion ſhall give me the Courage to attempt ſomething of that kind, I thought I could not better ſpend my Hours of Leiſure, than in preparing for *Publication*, for the Uſe of the Students and Practitioners of our

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Municipal Law, Editions of the Works of the more eminent Lawiers of former Times, which now lye buried in that noble Treasury of all polite Learning, and of every thing in particular relating to Law, *The Library of the Faculty*: And I chuse to begin with this, as being the most intirely *Municipal*, as well as one of the most valuable Pieces of its Kind and Size, that any of our Lawiers have yet produced.

IT is impossible to cast an Eye over these Sheets, without regreting that the Author did not intend them for publick Use: For if he could thus, without Study, and in an easy Manner, write only for the Use of his own Son; What might not have been expected from him, had he laboured an *Institute* of our Law for the Use of the Publick?

THE *Edition* of this Book claims the Protection of Your Lordſhip's Name by a *Twofold* Title; Your near Relation to the learned and acute Author, and Your unmerited Friendſhip and Favour to the Publiſher, who wanted nothing ſo much as an Opportunity of acknowledging it on ſome proper Occaſion.

I am, with the greateſt Reſpect and Truth,

My LORD,

Your Lordſhip's moſt obedient and moſt humble Servant,

ALEX. BAYNE.

TO THE READER.

THIS small Treatise, *upon some of the chief Titles of our Law, was written by Sir* THOMAS HOPE *of* Craighall, *Advocate to King* CHARLES I. *of blessed Memory. And we are told by some of the near Relations of the Family, That it was composed without any Study or Application, being dictated to his Sons for their Instruction, in Mornings while he was a dressing.*

The Publisher *sends it into the World without* Addition *or* Amendment, *as he found it in a* correct Manuscript *taken by a good Hand from that Copy which belonged to the late Sir* ARCHIBALD HOPE *of* Rankeilor, *One of the Senators of the College of Justice, whom the* Publisher *cannot mention on any Occasion, without paying to his* Memory *all due Respect; in grateful Remem-*

Remembrance, that he owes to him that Part of his Education, by which he is in any Meaſure qualified for this Province.

That Copy, there is Reaſon to believe, was the original One which was left in the Library of Craighall; *conſidering the Lord* Rankeilor's *near Relation to the Family, the Management he had many Years of all its Concerns, and that no Copy thereof is to be found in the Poſſeſſion of the Family ſince that Time.*

HOPE's Minor Practicks.

The Form of Proceſs before the LORDS.

1. THERE is an general, that no Summons can be called before the Lords while the firſt Day of Compearance be bygane, except allenarly in receiving of Witneſſes, which may be called upon the very firſt Day of Compearance.

2. *Item*, The like Order is to be obſerved in calling of Acts, which cannot be called upon the firſt

Day of Compearance, except for Witneſſes, as ſaid is.

3. *Item*, Albeit Summons cannot be called upon the firſt Day of Compearance, to compel the Defender to anſwer; yet they may be both tabulate and continued the firſt Day of Compearance.

4. *Item*, After the firſt Day of Compearance is bygane, the Purſuer may call any Day thereafter, it being within Year and Day; and if the Defender compear, he is ordained to ſee the Proceſs; and if there be moe Defenders than one, for whom moe Purſuers compear, they ſhould be ordained to ſee the Proceſs in the Houſe of any Advocate whom the Judge ſhall appoint.

5. *Item*, After the Pieces are ſeen, and delivered back to the Purſuers, he may urge the calling of his Cauſe as he finds Occaſion; and being called, the Party Defender will be compelled to propone his Defences; whereupon the Judge pronounceth his Interlocutor Sentence: And after all the Defences are diſcuſſed, either by repelling or admitting them to Probation, the Judge aſſigns a Day for proving of the Libel, if the Exceptions be repelled ſimply, in reſpect of the Libel, or of the Libel and Reply. If the Party Defender his Exception be not repelled ſimply, but in reſpect of the Reply or otherwiſe, aſſigns a Time for the Defender for proving of his Exception, if the ſame be admitted, or otherwiſe aſſigns a Day both to the Purſuer and Defender, *viz.* to the Purſuer to prove his Summons and Reply, in reſpect of an Exception proponed by the Defender, which was repelled; and

and to the Defender to prove his Exception, which was not repelled but admitted; and this is called, *Litiscontestation parte comparente.*

6. *Item*, If the Defender compear not, then either the Summons requires Probation, or is proven *instanter*, or needeth no Probation, which is in Causes of Reduction and Exhibition, whilk will bear Certification, and in other Cases, such as Removings, Letters conform, *&c.* where Probation is necessary, and is not proved *instanter*: There the Pursuer desires Letters to summon Witnesses, which is the Form of *Litiscontestation parte non comparente*, and desires a Term to be assigned to him to prove; which being assigned, the Act extracted thereupon is called *Litiscontestation parte non comparente*; but when the Summons needeth no Probation, or is proven *instanter*, the Pursuer craves Decreet and Sentence, which he must have if the Party compears not.

7. *Item*, There are some Causes wherein, albeit the Party compear not, yet the Judge in the Outer House will neither assign a Term to prove, nor give Sentence while he advise the Summons, the Relevancy and Desire thereof, and advise the same with the Lords: As for Example, If the Summons be for proving the Tenor of an Evident, or if the Pursuer in a Reduction satisfy the Production himself, and craves Decreet, because having seen his Reason *instanter*, or because the Reason is *negative*, whilk proves itself; and in these Cases or the like, the Judges cannot assign a Term, or give a Sentence till they advise with the Lords, albeit the De-

fender be absent: The like in Improbations and *Cessio bonorum* is observed.

8. *Item*, If the Cause be a Suspension, wherein the Pursuer calls, and the Defender is absent, then the proper Terms, either of the Pursuer's Desire, or of the Lords decerning, are, to suspend till they be produced, *viz.* the Decreets and Letters called for to be produced and suspended, as the proper Terms in a Reduction *parte non comparente*, are, to reduce for Non-production: And the proper Terms in Improbation are, *Grants Certification, and decerns to make no Faith*: And the proper Terms in Exhibition of Evidents, are, *Grants Letters* simpliciter, *and decerns*; and in all other common Actions, as Removings, *&c.* are only, *Decerns.*

9. *Item*, If the Party Defender be compearing, and all his Exceptions be proponed and repelled, then the proper Terms are, either *To assign a Term to prove*, if it requires Probation; or *To decern in the Terms* respective *foresaids*, where there is no Probation necessary.

10. *Item*, If the Cause be a Suspension, not only bearing Reasons, but also double, treple, multiple Poinding; in this Case, if one of the Defenders compear, and the rest be absent, the proper Terms of the Lords Decreets are, *Ordains the Party compearand to be answered and obeyed, so far as concerns the double Poinding*; and if the Party compearand dispute upon the Reasons of Suspension, and if the Reason be found not relevant, or not verified *instanter*; then the proper

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nd uſual Words of the Lords Sentence are, *Finds he Letters orderly proceeded, notwithſtanding f the Reaſon, or of the whole Reaſons.* Or if he Reaſons, or any of them be found relevant, nd proven *inſtanter*, the proper Words are, *Sus-ends the Letters* ſimpliciter.

11. *Item*, Where the Purſuer lyes off, and will ot call; in this Caſe the Defender may call upon is Copy, any Day after the firſt Day of Com-earance be bygone, and crave Proteſtation.

12. *Item*, If the principal Cauſe be of that Na-ure, which requires to be tabulate, there can be o Proteſtation granted upon the Copy, till the Copy be tabled.

13. *Item*, Albeit the principal Summons be not abulate, yet if the ſamen be continued, in that Caſe the Defender muſt call upon the Act of Con-inuation, with the Copy of the principal Sum-nons; and in this Caſe the Copy needs not be abulate, becauſe the principal Summons is pre-umed to be tabulate after Continuation.

14. *Item*, After Litiſconteſtation made, either *arte comparente aut non comparente*, there is no alling of the Cauſe, neither upon the Purſuer nor Defender's Part, but upon the laſt Act of the Proceſs.

15. *Item*, When the Party calls upon the Act nade after Litiſconteſtation, if he be Purſuer to whom the Summons is admitted to Probation, nd againſt whom an Exception one or moe is ad-mitted, in Favours of the Defender, he firſt ſa-isfies his own Term, by Production of Dili-gence;

gence; and thereafter craves Proteſtation againſt the Defender, or to circumduce the Term againſt the Defender, *quæ ſunt eadem*: And if that Term be ſatisfied by Production of Diligence *hinc inde*, there is a new Term aſſigned for Probation, *& ſic deinceps*, according to the ordinary Terms of Probation, received by the Practique and Cuſtom of the Houſe.

16. *Item*, If the Defender call upon the Act, it is either to produce his own Diligence, for proving his Exception, or to crave the Term to be circumduced againſt the Purſuer, anent the Probation of his Summons, or of any Reply, one or moe, if any be admitted to his Probation.

17. *Item*, When the Purſuer or Defender produces their Diligence, for ſatisfying of the Act, in this Caſe either of them may proteſt; *quoad vel contra alias probationes, quoad exceptionem, vel replicam reſpectivè.*

18. *Item*, When all the Terms of Probation are finiſhed, in this Caſe where the Probation pertains to the Purſuer, he muſt renounce further Probation, before the Proceſs be adviſed: And if the Purſuer urge the Proceſs to be adviſed, then if the Defender oppone, that it cannot be adviſed, becauſe the Act of Renunciation is not produced, the Lords will caſt off the adviſing of the Proceſs till the Act be produced: But when the Defender cloſes his Probation, he needs not renounce further Probation, but allenarly declares, that he produces ſuch Writs or Probation, for proving his Exception, and holds his Peace; and the Purſuer

ſuer proteſts, that the Cauſe ſhall be holden as concluded; and an Act being extracted hereupon, is equivalent to a Renunciation, and holden for Concluſion of the Cauſe; which being extracted, the Proceſs may be adviſed by the Lords, as proven or not proven.

19. After Renunciation or Concluſion of the Cauſe, and an Act extracted thereupon, none of the Parties may produce other Writs to be produced, than theſe that are expreſs'd in the Act, which commonly bear theſe Words, *That the Purſuer repetes the Depoſition of the Witneſſes and Writs produced* in initio litis, *and renounces.* And upon the Part of the Defender bear, *That he repetes the Depoſitions of his Witneſſes, and produces ſuch Writs, and holds his Peace*; whereupon the Lords ordain the Cauſe to be concluded.

20. *Item*, When the Lords adviſe the Cauſe *poſt concluſionem*, if the Probation be all in Witneſſes, the Lords adviſe the Cauſe, proven or not proven, without calling of the Parties; but if either the Whole, or a Part of the Probation conſiſts in Writ, the Party *poſt concluſionem in cauſa*, muſt ſee the whole Writs, and be heard to object againſt the ſame, wherefore the ſame proves not. And if he either oppone *nullitatem juris* or Falſhood, it will be received, and diſcuſſed by Way of Objection *contra producta*; and the Reaſon of this is good, becauſe the Lords will oftentimes admit or repel an Exception, reſerving Objections *contra producenda.*

21. *Item*,

21. *Item*, If the Falshood be opponed, it is ever admitted, except the Writ, against which the Falshood is opponed, was produced *in initio litis*, in the which Case, seeing he had the Exception of Falshood competent to him *ante litem contestatam*, he will not be heard now, because it will be taken for a Delay; but the Falshood will be reserved to him by Way of Action.

22. *Item*, Where an Exception of Falshood is proponed, either *ante vel post litem contestatam*, the Proponer must consign such a Sum of Money as the Lords appoint.

23. *Item*, The Exception or Objection of Falshood *post litem contestatam*, in respect the Falshood and Trial thereof consists *in facto*, is in Effect a new Litiscontestation, which requires all the Terms of Probation, and thereafter Conclusion of the Cause.

24. *Item*, When the Cause is advised, the Lord pronounces in these Terms, either *Finds proven and decerns*, or *not proven and assoilies*.

25. *Item*, After the Litiscontestation in Causes of Removing, the first Thing that the Pursuer craves, is, That Caution be found, or else that Decreet be pronounced; but sometimes the finding of Caution will be continued, till the next Term of the Process, if the Pursuer have Terms to run, for proving of his Reply. Or if the Pursuer be warned at the Instance of the Defender, to give his Oath *de calumnia*, if he have just Cause to deny the Truth of the Exception; and if he be not present to give his Oath, but desires a Day to

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hat Effect: If he take a Day, the Lords will ive the ſame Day to the finding of the Caution.

26. If the Defender produce a Bond of Cauion, and that the Cautioner be rejected, upon he Alledgeance of Inſufficiency; in this caſe, the Lords will aſſign an new Diet for finding of a beter Cautioner.

27. At the firſt Inſtitution of the Seſſion, Summonſes were appointed to be called every Day of he Week, according to the Table; and every Day of the Week had its own Table, containing ts own proper Cauſes, which were to be called hereon; and alſo there were ſome Cauſes which might be called any Day of the Week, and theſe were under the common Table.

28. This Order of Table is altogether out of Uſe, except only the common Table, and the Table of *Friday* appointed for the King's Cauſes.

29. The Keeper of the Tolbooth of old was obliged to affix on the Tolbooth-wall the Roll of the tabled Cauſes: But this is out of Uſe, and now he only receives the Summons, and inſerts a Minute thereof in his own Minute-book, and gives back the Summons to the Party, and writes on the Back thereof, *Tabulate*, and ſubſcribes his Name.

30. *Item*, To know what Summons ſhould be tabulate, there is an general, That all Summonſes which abide Twenty one Days Warning ſhould be tabulate; and no Summons that comes in upon Six Days Warning abides tabulating, except Improbation.

31. *Item*, All Summonſes of Reduction and Declarator of Eſcheats, Redemption and Nonentries, and transferring of Actions and Decreets, abide Twenty one Days Warning.

32. *Item*, All Summonſes *in facto* that require Probation, require Twenty one Days Warning, except they be verified *inſtanter*, or privileged either in their own Nature, or by the Lords Deliverance.

33. *Item*, Summonſes of their own Nature privileged, and which come on Six Days Warning, are, Summons of Removing, Summons of Poinding the Ground, for Annualrent, for Exhibition of Evidents: All Summons of Suſpenſion of Decreets, or Nullities of Hornings which are craved to be ſuſpended; and alſo Summons to make arreſted Goods forthcoming.

34. *Item*, Some Cauſes are privileged by the Lords Deliverance, as Cauſes alimentary; or becauſe the Summonſes are verified *inſtanter*, or referred to the Party's Oath, or becauſe acceſſory to the Lords former Decreets, as Summons of ſpecial Declarator after a general.

35. *Item*, Summons of recent Spulzie being intented within Fifteen Days after the committing thereof, are privileged from the Table, and alſo from Continuation.

36. As to the Continuation of Summonſes, there is a general, That all Summonſes that conſiſt *in facto*, and are to be proven by Witneſſes, muſt abide Continuation, except the ſame be privileged, either of their own Nature, or by the Lords Deliverance

pearance, as Summons to make arrested Goods forthcoming, and recent Spulzies and Summons accessory to the Lords Decreet.

37. *Item*, There is another, That all Summonses whereupon the Lords grant Certification, and give a Decreet against a Party for not Compearance, without Probation of the Summons, muſt abide Continuation; as Summons of Reduction of Improbation, Exhibition of Writs, *&c.*

38. *Item*, A third general, That Summonſes which are verified *inſtanter*, albeit in their own Nature they abide Table, and are execute upon Twenty one Days Warning; yet in reſpect they are verified *inſtanter*, abide no Continuation; as in Declarators of Eſcheat, Nonentries, Redemption, Transferrings, *&c.*

39. *Memorandum*, There is an Exception from the laſt Rule of Declarators, concerning expiring of Reverſions which abide Continuation, albeit they be proven *inſtanter*, in reſpect of their Importance, being for the Loſs of Heritage.

40. *Item*, All Actions before the Lords have their Diet of Compearance, with Continuation of Days; and are not peremptory as before inferior Judges, but may be called at any Time within Year and Day, becauſe during that Time, *currit inſtantia & non perit*: But after Year and Day, if the Summons be not called, *medio tempore*, *perit inſtantia*; and the Summons cannot be called, except the ſame be wakened, and the Party of new ſummoned, which may be done on Six Days Warning, or fewer; notwithſtanding the principal Sum-

mons, of its own Nature, abides Twenty one Days Warning.

Of Kirks and Biſhops.

41. ALL Kirks are either ſeveral Benefices, or part of Benefices. Several Benefices are called *jura patronatum*, becauſe the beneficed Perſon cannot come to the Right thereof, but by the Preſentation of the Patron; and the other Kirks which were not ſeveral, but united to Benefices *ad diſtinctionem*, were called *patrimonial*, becauſe they were Parts of Benefices, *nam Eccleſia unita non dicitur Eccleſia vel beneficium, ſed pars beneficii*. This Diſtinction is clear in the Inſtance of all the Biſhops in *Scotland*, who of old, and now by their Reſtitution, have ſtanding in their Perſons the Rights of Kirks both patrimonial and of Patronage: And the Kirks which are not patrimonial, whereof the Fruits and Rents pertain not to the Biſhop, but wherein he has *nudum jus præſentandi*, are called *jura patronatus*; and the Perſon preſented by the Biſhop to his Kirk, has Right to the whole Rents and Fruits of the Kirk and Benefice, to the which he is preſented. And albeit the Biſhops plant and admit Miniſters in their own patrimonial Kirks, yet the Miniſter has no Right to the Fruits and Rents of the Kirk, becauſe the Miniſter is not Titular thereof, but allenarly hath Right to ſuch a Portion or yearly Duty out of the

Kirk

Kirk as the Biſhop appoints him for his Maintenance.

42. Churches of Patronages are either Eccleſiaſtical or Laick: Eccleſiaſtical, were theſe whereof the Patronage pertained either to the Pope or ſome Eccleſiaſtical Perſon, as Biſhop, Abbot, Prior, *&c.* Before the Reformation the Pope was accounted *univerſal Patron* of the whole Kirks of *Scotland*, and he was founded *quoad hoc in jure communi*; and ſince the Reformation the King has come in his Place, and is preſumed of the Law to be *Patronus univerſalis*: So that, as of old, all Patronages, except where either Eccleſiaſticks or Laicks could ſhow a particular lawful Right of the Patronage in their Perſons, ſo now all pertains to the King, except other lawful Rights be ſhown in the Perſon of any Subject.

43. At the Time of the Reformation the King got not only Right to the Patronages of great Benefices, as Biſhopricks, Abbacies, Priories, *&c.* but alſo the Right of all other inferior Benefices, as Parſonages, Vicarages, whereof the Patronage either pertained to the Pope, or to the Biſhops, Abbots or Priors. But in my Opinion the King had them by a diverſe Manner; for by the Act of Parliament in *Scotland*, the Pope's Authority is aboliſhed; by the which, the Patronages pertaining to the Pope were then eſtabliſhed in the King's Perſon: But as for the Patronages pertaining to Biſhops, Abbots and Priors, *&c.* I find no Law or Act of Parliament which deprives them of their Patronages, but only a perpetual Cuſtom ſince that

Time that the King hath preſented to all Benefices, whereof the Prelates of *Scotland* were Patrons; which Cuſtom hath taken the firſt Ground not from a poſitive Law, whereof we have none, but from the Will and Pleaſure of the King, who having the Patronage of the great Benefices in his Hands, by aboliſhing the Pope's Authority, preſented the Prelates to the great Benefices when they were vacant *quoad patrimonium, ſed non quoad jura Patronatus*, and by a ſecond and reciprocal Act preſented to the ſmall Benefices, whereof the Prelates were Patrons of old.

44. But now the Biſhops, by the late Act of Parliament 1606, in the 18th Parliament of *James* VI. are reſtored to all the Patronages whilk pertained to their Biſhopricks, except ſuch as were lawfully diſponed before by the King's Majeſty, with Conſent of the Titulars who ſtood preſented to the ſaid ſmall Benefices, and confirmed in Parliament.

45. *Item*, Before the Reformation there were ſome Laick Patronages, which pertained neither to Pope nor Prelate, but to Laick Patrons; and the Right they had behoved either to flow from the Pope after he was made univerſal Patron of the haill Kirks of *Scotland*, or elſe the Benefices have been founded with this Quality, *Reſerving to the Founder, his Heirs and Succeſſors, the Right of the Patronage.* But now all the Laick Patronages of the Kingdom which pertained to Subjects, have no other Warrant but Infeftments flowing from the King before the Reformation. And as to the o-

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ther Patronages which the King hath disponed ince, they are not counted Laick but Eccleſiaſtical Patronages, that is to ſay, Patronages to which e King hath Right, by coming in Place of the ope and Prelates. And it is expedient to know e Difference betwixt old Laick Patronages and eſe which are diſponed by the King ſince the Reformation, becauſe by Act of Annexation in *July* 587, all Kirk-Lands are annexed to the Crown, ith an Exception always of Lands which perained to Benefices, being Laick Patronages which ere lawfully eſtabliſhed before the Reformation.

46. *Item*, Before the Reformation, the King's Majeſty and his Predeceſſors had ſome Laick Patronages which pertained to the Crown; and it hath een a great Queſtion how theſe Patronages came the King's Hands, whether *jure coronæ ſimpliciter*, or by Forfeiture of the Subjects who were inſt therein of before; but it is certain that the King ot the moſt part of them by Forfeitures, as the atronage of the Provoſtry of *Lincluden*; by the orfeiture of *Douglas*, the Patronage of the Colge of *Dumbar*; by the Forfeiture of the Earl of *March*, the Patronage of the Provoſtry of *Kirkbeugh*; by the Forfeiture of the Earl of *Fife*, which true, in reſpect of the mediate Way how theſe atronages have laſt come to the Crown: But that xcludes not but the ſame Patronages pertained of efore to the Crown, *jure coronæ*, ſince the ſame ubjects that were forfeit might have had them of efore from the King.

47. And it is likely that when King *Malcolm Canmore* disponed all his Lands to his Subjects, for their Service, and reserved to himself allenarly the Ward and Marriage of the Heirs; that at the same Time he disponed to his Subjects also all such Laick Patronages as he had then in the Bounds of the Lands disponed.

48. And it cannot be denied, but the Kings of *Scotland* before King *Malcolm*'s Time founded and erected the whole Bishopricks, Abbacies and Priories of *Scotland*, and so had Power in the Foundation to reserve the Patronages to themselves, as also had the like Power in erecting of small Benefices.

49. *Item*, All the Lands, Teinds and Kirks of *Scotland* out of Question pertained once to the King, *viz.* during the Time of Paganism, for then the Pope had no Jurisdiction in *Scotland*; and after Paganism, whatever was given to the Pope behoved to flow from the King, and to be tied to such Conditions as the Kings reserved to themselves; and therefore *meo judicio*, all the Laick Patronages in *Scotland* have pertained to the King's *jure coronæ simpliciter*, and from them have flowed to the Subjects.

50. *Item*, Where Kirks are not erected in several Titles or Benefices, but united to other Benefices; In this Case the Titular of the Benefice hath not *jus præsentandi* of Titulars to the Kirks united, but the Kirks are planted with Ministers, according to the Laws of the Kingdom appointed for Plantation of Kirks, which is now in the Power

of

of the Bishops of the Kingdom within their own Dioceses, by Act of Parliament 1612; and of before was in the Power of the several Presbyteries.

51. *Item*, When the Bishops plant a Kirk which is of their own Patrimony, they do the same, by admitting a Minister thereto, as Diocesian Bishops of all their own Kirks that are within their Diocese (wherever they lye) *formaliter*, albeit locally they may be within another Diocy: But when the Bishop plants a Kirk, whereof he is Patron; in that Case he presents not, but confers *pleno jure*: So that in other Patronages, there is requisite to a lawful Title, a Presentation from the Patron, a Collation and Admission from the Bishop, and an Institution; but in Kirks pertaining to the Bishop's own Patronage, there is only requisite Collation and Institution.

52. *Item*, In Laick Patronages, the Patrons are obliged to present within Six Months, after which Time the Bishop has *jus conferendi*, *jure devoluto*.

53. *Item*, All Benefices consist either of Temporality or Spirituality; and the Spirituality is the Kirks, or Tithes pertaining thereto; and the Temporality is the Kirks Lands.

54. *Item*, In *Anno* 1561, it was ordained by Act of Council, *That the Thirds of all Benefices should be applied to the Maintainance of the Ministers in the first Place, and the Superplus of the Thirds, to the Maintainance of the King's House; and to this Effect the whole Prelates and beneficed Persons were ordained to give up the Rental of*

their

their Benefices to the Collector, or Collector's Clerk, who were appointed for that Effect: And conform thereto the Prelates or benficed Persons gave up their Rentals; which being done, the said Rentals were registrated in the Rental-books.

55. *Item*, For better Payment of the Thirds of Benefices, there were particular Places designed for Payment of the Thirds, which were called the *Assumption of the Thirds*; and after these Assumptions, the Prelates and beneficed Persons had no Power to set Tacks, nor give Pensions out of that which was assumed for Payment of the Third: but all such Tacks were null of the Law, which is established by Act of Council, *Anno* 1587, and ratified in Parliament, *June* 1592, Act 121.

56. *Item*, The Thirds were distribute amongst the Ministers in this Sort; *First*, The several Kirks were planted by the Superintendants appointed in every Province, by the General Assembly, and at the Desire of the Superintendants, or Commissioners of the General Assembly. The King and the Queen past a Commission under the Seals, to a Number of the Nobility and Ministers, for meeting and conveening at *Edinburgh*; and for modifying the Stipend to the Ministers of these Kirks which were planted; which Meeting was called the *Platt*; and this *Platt* sat yearly in *November* or thereabout: And this Form continued ever till the Bishops were restored in *Anno* 1606; and as yet the Books of Modification and Assignations of Ministers Stipends are extant, from the Year of GOD 1561, to 1606, and are in the

the Keeping of the Clerks of the General Assembly, and his Deputes, who now also at the Command of the Bishops, every one of them within their own Diocy, inserts in the saids Books of Assignation, the Names of such Ministers, with the Quantity of their Stipends, as they gave Warrant for; and the said Clerks and their Deputes had and have Power to give Extract out of the Register, and to subscribe the same, which makes Faith in Presence of the Lords of Council; and whereupon the Lords *brevi manu*, without Decreet, grant Letters of Horning, arresting and Poinding in Favours of the Ministers.

57. *Item*, Whatsoever of the Third was not assigned to Ministers, pertained to the King, and it was called *Superplus*, whereof there was yearly a Book made, which altered, and was more or less, according to the Assignation to Ministers, and according to this Superplus Book, the King's Collector did charge for this Superplus for the King's Use; and with it also for the omitted Benefices, which the Prelates and beneficed Persons omitted in the Upgiving of the Rental; and also for common Kirks and Friars Lands, which also with the Thirds, were appointed for the Uses foresaid.

58. *Memorandum*, The common Kirks pertained to the Chapters of the Bishopricks *in communi*, till the Year 1594, at which Time they are erected by Act of Parliament in several Parsonages and Benefices, and ordained to be conferred on Ministers as other Benefices.

59. *Item*

59. *Item*, The Remanent of the Thirds for the King's Use, is now for the most part extinguished by the Restitution of Bishops, who have Right to their own Third, and partly by the Erection of Priories and Abbacies, by the which, the Thirds are discharged to the Lords of Erection, the planting the Kirks. Likewise in the Parliament 1617 and 1621, there was Commission granted by the Parliament for Plantation of Kirks, which hath made the old Books of Assignation of Ministers Stipends, and yearly Platt thereof, to become out of Use, and the only Use thereof to be, as said is in inserting of the Ministers Names by Warrant from the Bishop.

60. Every Bishop had their own Chapter, that is, a Number of Persons and Vicars within their own Diocy, by whose Consent the Affairs concerning the Bishoprick were done, and that reciprocally; for the Bishop can do nothing without the Consent of the most part of the Chapter, nor yet the Persons of the Chapter in their particular Benefices, without Consent of the Bishop, Dean and Chapter, or most part thereof.

61. But there is an Exception here from the Bishoprick of St. *Andrews*, which had no Chapter past Memory of Man, but the Consent of the Prior of St. *Andrews*, and Convent thereof, whose Consent was testified, by appending the Convents Seal of the Priory, was to the Archbishop instead of a Chapter; and the Reason hereof hath been apparently, because the Arch-bishop of St. *Andrews* at the Foundation of the Priory, which was

erected

erected by himself, and founded out of the Rents and Fruits of his own Benefice, or out of such Kirks as did ly within his own Diocy, and were of before of his Chapter, did by that Foundation extinguish the Chapter Kirks, and make them patrimonial to the Priory; and in respect thereof, the Prior and his Convent remained to the Bishop in Place of a Chapter, in whose Place now the Parliament ordained a new Chapter, by Act of Parliament 1604, which the Lords find only to be for the Bishop, and not mutual, as it was of old, by Decreet in *Anno* 1624.

62. *Item*, As the Bishops had their Chapters, so Abbacies and Priories had their conventual Brethren, whose Consent, or the most Part of them, was necessary to all Tacks and Feus: But now the Convent-Brethren are all dead, and there is none to be put in their Places: And by Act of Parliament 1584, all Monks Portions are ordained to pertain to the King after their Decease: But now all thir Monks Portions are disponed upon by the King to the Lords of Erection in their several Erections; and the same only remains in Abbacies and Priories not erected; and in thir, the common or Convent Seal is in Place of the Convent.

63. *Item*, There are some Abbacies, which have no Convent, and are neither called Priories nor Abbacies, but Monastries, whereof there are three or four in *Scotland*, *viz.* the Monastry of *Falfoord*, *Peebles*, *Scotlandwall*, and the Monastry of the Trinity Friars in *Aberdeen*.

64. *Item*,

64. *Item*, Besides all these, there were collegiate Kirks, which consisted of a Provost, and so many Prebendars, who were obliged to do certain divers Services in the Collegiate Kirks; and these were founded in *Scotland* by Noblemen and great Barons, as *Kirkheugh* by the Earl of *Fife*, *Lincluden*, by *Douglas*, *Tayne*, by the Earl of *Ross*, *Dunbar*, by the Earl of *March*, *Dumbarton*, by the Earl of *Lennox*, *Crighton*, by *Bothwell*, and *Abernethy* by *Angus*, whereof the most Part are come to the King by the Forfeiture of the Founders.

65. *Item*, Other Gentlemen who could not attain to the founding of Colleges, erected Chappels and Chaplanries, in which they had divine Service: And by the Act of Parliament 1567, it was declared, *That it shall be lawful to all Patrons of Prebendaries and Chaplanries, to bestow the same upon Bursars.*

66. *Item*, The Kings of *Scotland* had also their own College-Kirks erected for their own Use, which is called the Chapel-Royal of *Stirling*, whereof the Principal Administrator was, and is called, *Dean of the Chapel-Royal*; and the rest were and yet are called *Prebendars*, and are obliged to serve in the King's Chapel, where the King commands by the Dean, who is now the Bishop of *Dumblain*; whereas before it was ever annexed to the Bishoprick of *Galloway*.

Of

Of Teſtaments.

THE Biſhops of old had double Juriſdiction, one Spiritual, of the Kirk of their Diocy; and the other Civil, over all the Inhabitants of their Diocies; and to that Effect appointed their Officials, who had Power to judge in all Matters concerning Teinds, Minors, Orphans, and poor Widows; and ſuch had Power to confirm all Teſtaments, of all that died within their Diocies; and for confirming thereof, had their *Quota*, which was *viceſima pars* of the Defunct's Part.

68. *Item*, This Juriſdiction was taken from the Biſhops at the Reformation; and the Queen made Commiſſars within each Diocy, with the ſame Power which the Officials had; and now the Biſhops are reſtored thereto by Act of Parliament 1609, with this Proviſion always, That there ſhall be four Commiſſars in *Edinburgh*, who ſhall be Judges in all *Scotland* to Divorcements, and Reduction of inferior Commiſſars Decreets; of which four, two to be admitted by St. *Andrews*, and two by *Glaſgow*, albeit their Reſidence be only within the Diocy of St. *Andrews*.

69. Defunct's Teſtaments were of old confirmed by the Officials, and now by the Commiſſars, whether the ſamen were Teſtaments Teſtamentar, or Dative; but with this Diſtinction, That the Nomination of Executors made by the Defunct,

was

was confirmed immediately without the Neceſſit
of a preceeding Sentence: But where there wa
no Nomination by the Defunct, there behoved t
preceed a Decreet of the Commiſſars, decernin
Datives, whereof this is the Order that was and
kept.

70. The Procurator-fiſcal of each Commiſſario
immediately after the Defunct's Deceaſe, cauſe
ſerve an Edict upon a *Sunday*, at the Kirk-doo
upon Nine Days Warning, to warn the Wife
Bairns and others, having Intereſt, to compea
before the Commiſſar, and to hear and ſee Execu
tors decerned and confirmed to the Defunct, a
which Diet, if any compeared for the Defunct, an
produced a Nomination; and if no other compear
ed and opponed againſt the ſame, the Producer
admitted by the Procurator-fiſcal to confirm th
Teſtament; and to that Effect to give up an In
ventar: But if no Nomination was produced, the
if the Relict and Bairns compeared, and deſired th
Office of Executry, the Judge decerns them Exe
cutors; whereupon they give out a Decreet
which is called Dative: And if none compeare
the Judge decerneth his own Procurator-fiſca
But thereafter by a Supplication given in to th
Judge, by the Relict and Bairns, and any other
Kin, or elſe not of Kin, by a Creditor, or an
having any reaſonable Intereſt, they will be ſurro
gate in Place of the Procurator-fiſcal, in the Offic
of Executry, which is called, *Decreet of Surroga
tion.*

71. *Item*

71. *Item*, The eſſential Points of a Confirmation, are, the giving up of the Inventar, ſwearing thereto, and finding of Caution to make it furthcoming to all Parties having Intereſt; and the Inventar conſiſts of theſe three Parts; *Firſt*, Of the Goods and Gear of the Houſe, and Corns, being the Grouth of the Mains, or in their Barns or Barn-yards, with Horſes, Oxen, *&c.* *Next*, Debts owing to the Defunct; and *laſt*, Debts owing by the Defunct; and after this the total Sums of the whole are drawn up, which are either divided or undivided according to the Condition of the Inventar and Eſtate of the Defunct when he died; for if Debts exceed the Goods, there is *nulla diviſio*: And if the Defunct have Wife and Bairns, the Diviſion is *tripartite*, whereof a Third to the Wife, another to the whole Bairns, without the Heir: And the Third is called the Dead's Part, becauſe he had Power to diſpone the ſame to whom he will; but if it be not diſponed, this Third alſo falleth to the Bairns beſide the Heir; and if the Defunct did name Executors, Strangers, and did not expreſly diſpone upon this Third Part by Legacy or otherways, then the Executors by Act of Parliament, have the Third of the Defunct's Part for their Charges.

72. *Item*, If any Thing was omitted in the uplifting of the Inventar of the Teſtament, or ill appretiate, or given up within the juſt Worth, then at the Inſtance of any Party who has Intereſt; or of the Procurator-fiſcal, there is an Edict raiſed for decerning Executors dative *ad omiſſa & male*

appretiata, which muſt be execute againſt the Executors confirmed, on Nine Days Warning; and at the Day of Compearance the Purſuer will be preferred to the Executors confirmed, *propter dolum & malam fidem* of the Executors confirmed, except they be able to purge the Fraud by pregnant Preſumptions and Circumſtances: And this Teſtament *ad omiſſa* is confirmed by the ſame Order, as the Principal, except allenarly that this receives no Diviſion, in reſpect both the Relict and Bairns may be excluded *ob malam Fidem*; and the whole, without Diviſion, will pertain to the Executor-dative *ad omiſſa*; and yet if either the Relict or Bairns purge the Fraud, *ut ſupra*, they will be admitted to crave their own Part, as in the principal Teſtament.

73. *Item*, The Executors in the principal Teſtament, for eſhewing of this Prejudice, which may ariſe by the *omiſſa*, are in Uſe, at the Time of Confirmation of the principal Teſtament, to proteſt that they may be heard to eik any Thing that is omitted when the ſame ſhall come to their Knowledge; and they may upon Supplication to the Commiſſars (where any Thing omitted cometh to their Knowledge) add the ſame to the Principal Teſtament, which is done without new Confirmation, and admitted by the Commiſſar, providing it be done before ſerving the Edict *ad omiſſa*, and providing that which is craved to be added, exceed not One thouſand Pounds or the Half of the principal Inventar, which the Commiſſar will not

do

do by Way of eik, but will have the ſame done by Way of new Confirmation.

74. *Mem.* Albeit a Father's Teſtament, who has a Wife and Bairns, receive a tripartite Diviſion, yet where it wants any of them, it receives only a bipartite Diviſion; and the Teſtament of a Woman cannot receive a bipartite Diviſion, if her Husband be dead, but is confirmed without any Diviſion, albeit ſhe have Bairns, becauſe *non debetur legitima liberis reſpectu matris; quia mater non habet liberos in poteſtate ut pater.* But if her Husband be living, and Bairns gotten betwixt them, then her Teſtament receiveth a tripartite Diviſion, *viz.* A Third to her ſelf, one to the Husband, and one to the Bairns, which is in reſpect of the Legitim Portion, which is due to the Bairns, after the Father's Deceaſe, albeit there be no Legitim due to them by Deceaſe of the Mother; and if there be no Bairns, the Teſtament receiveth a bipartite Diviſion, *viz.* one Half to the Defunct, and another to the Husband.

75. *Item,* Albeit the Heir be excluded from all Portion of the Father's Teſtament, yet *quoad matrem,* he comes alike with the Brothers and Siſters.

76. *Item,* In Teſtaments, *non eſt jus repreſentandi,* as in Lands and Heritages; but neareſt of Kin in Degree, excludeth all other of further Degree, albeit more near *quoad ſucceſſionem* in Heritage: For in Heritage there is *jus repreſentandi*; and the Son, Oy, *&c.* have the ſame Right and Place which the Father had: But in Teſtaments,

the Father's Brother or Siſter, will exclude the Brother or Siſter's Bairns, and have the ſole Benefit of Executry.

77. *Item*, The Benefit of the Confirmation of the Teſtament, is this, That the Executor confirmed is no further tied in Law to Payment of the Defunct's Debts, but *ſecundum vires inventarii*; whereas any Perſon one or more intromitting with the Defunct's Goods before Confirmation, may be conveened as univerſal Intromitters for the Defunct's whole Debts, albeit the ſame exceed the Intromiſſion never ſo much. And the only Way to purge and free themſelves, is, to confirm *ante Sententiam*, otherwiſe, *tenetur in ſolidum*.

78. *Item*, Where the Teſtament is confirmed the only Way to free them from Debts which exceed the Inventar, is, to obtain a Decreet of Exoneration before the Commiſſars, to which they muſt ſummon the whole Creditors and others generally.

79. *Item*, The Commiſſars do never admit of Exoneration, but by Way of Exception, but before the Lords 'tis ordinary. If the Executor conveened offer him to prove that the Inventary is exhauſted by true Debts, proceeding upon Decreets, or proven by Writ, whereof he made Payment, before the Intention of the Cauſe againſt him, it will be ſuſtained.

80. *Item*, In Teſtaments, all theſe who are of a like Degree, are admitted to the Office of Executry, albeit ſome thereof be *germani*, ſome *uterini tantum*, and ſome of them *conſanguinei tantum*;

whereas

whereas in Succession of Heritage, the Brother or Sister German excludeth all others who are either *consanguinei* or *uterini*.

81. *Item*, In Testaments the Succession is granted to all who are of one Degree, which is divided amongst them *quoad capita non quoad stirpes*, albeit it be otherwise in Succession of Heritages, which is divided *quoad stirpes non quoad capita*.

82. *Item*, The Testator cannot dispone in Testament that which is Heritage, or Heirship Goods, but he may name a Tutor to his Bairns, who are *infra pubertatem*.

83. *Item*, Albeit in Testaments, Executors confirmed have *beneficium inventarii*, yet if the Creditor offer him to prove that the Executor intromitted with a Number of Goods, which he has *dolosè* omitted. The Lords are in Use to admit this Reply *ad hoc* to make the Executor liable to the whole Debt for the which he is pursued, albeit the Intromission be less than the Debt.

84. *Item*, An Executor nominate or decerned Dative, may pursue before Confirmation, providing he have Licence of the Commissars to that Effect; but this is only granted in principal Testaments, either Testamentar or Dative, but not in Datives *ad omissa*, in respect the Commissars refuse to grant Licence thereon.

85. *Item*, Licence is commonly granted by the Commissars *ad diem vel usque ad sententiam exclusivè*; and if any Licence be granted *includendo* Sententiam, or if the Sentence happen to be pronounced before the outrunning of the Day to the

the which the Licence was granted; in this Caſe the Lords ordain the Sentence not to be extracted till the Purſuer report to the Clerk of the Proceſs the Confirmation of the Teſtament, or otherwiſe find Caution to confirm betwixt and ſuch a Day deſigned by the Lords.

86. *Item*, The Caution found in the confirmed Teſtament, cannot be purſued till the Executor be diſcuſſed.

87. *Item*, Albeit commonly the Confirmation bear, That the Caution is found by the Executor, yet if the Executor be Pupil and Minor, and gives not up, nor makes Faith upon the Inventar himſelf, but the Inventar is given up and ſworn by the Mother or Tutor, or neareſt of Kin, *&c.* In this Caſe the Caution is underſtood to be found by theſe who give up the Inventary, and not by the Minors; and the Minors may purſue thoſe that give up the Inventary, and intromitted with the Goods and Gear confirmed, and obtained Sentence againſt them; and if they ſhall not be found *ſolvendo* after the Diſcuſſing of them, they may purſue the Cautioner contained in the Teſtament; and it will be no relevant Defence to the Cautioner to alledge that he is Cautioner for the Executor; and that therefore he can have no Action againſt him, but ought to relieve him, in reſpect the Caution is holden to be found not by the Minor, but by the Upgiver, as ſaid is.

88. *Item*, Where there are more Executors than one confirmed, and they all die to one, he remains Executor *in ſolidum per jus accreſcendi*: But if he

he die, then the Teſtament ſo far as is not execute, muſt be of new confirmed *quoad non executa*; and Executors decerned and confirmed to that Effect; and that is counted *non executum*, which was not actually intromitted with, nor uplifted before their Deceaſe, which chiefly has reſpect *ad nomina debitorum*.

89. *Item*, Where there are more Executors than one, they muſt all be conveened; and if any of them be omitted, the Commiſſars do refuſe Proceſs; but I have ſeen the Lords grant Proceſs, if the Sum purſued for was within that Part of the confirmed Teſtament, which by the Diviſion of the haill, would fall to the Executors conveened.

90. *Item*, Where all the Executors are purſued for a Debt, the Lords commonly find that they cannot be conveened *in ſolidum*, but *pro virili parte*: But if all be deceaſed but one, he is conveenable *in ſolidum*, reſerving him Action and Relief againſt the Heirs and Executors of his Co-executors.

91. *Item*, Where there are more Executors confirmed, they muſt all purſue; and one cannot purſue without another; at leaſt, if the Co-executor refuſe to concur to the Purſuit, they muſt be called for as Defenders for their Intereſt, which is ever obſerved before the Commiſſars. But, I have ſeen the Lords ſuſtain the Purſuit of one of the Executors, without Citation of the reſt, reſerving always the Purſuit to the Executors Part that purſueth.

92. *Item*, This Exception is ordinary, where Parties are purſued as univerſal Intromitters: No Proceſs, becauſe there are Executors confirmed before the Intention of the Cauſe.

93. *Item*, This other Exception is admitted before the Commiſſars, but not before the Lords, That there are intromitters who are not called.

94. *Item*, The Defence commonly propone to purge univerſal Intromiſſion is neceſſary; Intromiſſion with ſuch particular Goods and Gear whereupon he alſo muſt condeſcend and offer to make the ſame furthcoming; and this Exception is found relevant, except the Purſuer reply upon further Intromiſſion; whereupon alſo he muſt condeſcend; and this is accounted neceſſary Intromiſſion, where the Relict and Bairns meddle with Goods within the Houſe *cuſtodiæ cauſa*; but if they ſell them, it is not neceſſary, *niſi ſervandi deterior fiet.*

95. *Item*, The Executor is liable in Payment of moveable Debts, and of old could not be purſued for an heritable Bond; but now the Lords promiſcuouſly ſuſtain Action againſt the Executor and Intromittors, as well for heritable as moveable Bonds, and that without diſcuſſing the Heirs, whereas the Heir is not conveenable for moveable Sums, *niſi poſt annum & diem*, after the Defunct's Deceaſe, albeit he be already entred Heir.

96. *Item*, Albeit the Heir have *annum deliberandi*, and may not be purſued within Year and Day, nor charged to enter Heir, whereupon Purſuit may be moved againſt him within Year and

Day

Day, neither for moveable or heritable Bonds; yet if he voluntarily enter Heir, by ſerving and cognouring himſelf Heir to his Predeceſſors either generally or ſpecially, or by accepting a Precept of *clare conſtat* from his Superior, for infefting him in Lands, as Heir to his Predeceſſors: In this caſe, he may be purſued for heritable Bonds, *etiam infra annum & diem*, and yet may not be purſued for moveable Bonds till the Year be bygone; and the Reaſon is, becauſe by entring Heir, he has renounced the Benefit of *annum deliberandi*, but not renounced the Benefit introduced in his Favour by an Act of Parliament, whereby the Heir is made free from all Purſuits for moveable Sums within Year and Day.

97. *Item*, Albeit the Lords grant Action for heritable Bonds within Year and Day, where the Heir is entred, yet they will not grant them againſt him, as behaving himſelf as Heir, by all the Ways whereby *geſtio pro hærede* is inferred, by the Law and Cuſtom of this Kingdom; and that becauſe it is not liquid and clear by theſe Deeds, that he has renounced the Benefit of Deliberation, and the ſame requires Probation *de facto*, as to prove Intromiſſion with the Heirſhip-Goods, or Mails and Duties of Lands, Teinds and Annualrents to which the Defunct had Right, and *dubius eſt eventus probationis*, and the Purſuer may not poſſibly prove the Intromiſſion: In the which Caſe, the Lords behoved to aſſoilzie, and conſequently find themſelves to have done unjuſtly, by granting Proceſs within Year and Day.

98. *Item*,

98. *Item*, It may be asked, Whether the Lords will ſuſtain Proceſs within Year and Day, againſt an univerſal Succeſſor to the Defunct's Lands and Heritages? To the which it is anſwered, That this Member of Summons, as univerſal Succeſſor, may have a double Senſe; for either it may be underſtood of univerſal Succeſſion to the Lands and Heritages after the Defunct's Deceaſe; in the which Senſe it is coincident with the other Member before ſpecified, of behaving as Heir by Intromiſſion with the Mails and Duties, &c. *& in hoc ſenſu*, repeats the former Anſwer which was made to that Member; or otherwiſe univerſal Succeſſor may be underſtood of the apparent Heir who was infeft by his Predeceſſor in his own Lifetime, *ſed poſt contractum debitum*, whereupon he is purſued; and in this Caſe it is not certain what the Lords will find, neither has it ever been practiſed; and there may be Reaſons *pro* and *contra*, becauſe the univerſal Succeſſor may be eſteemed *tanquam hæres*: But I think the Lords would incline to grant no Action till Year and Day be bygone, becauſe he is purſued as apparent Heir, and for his Father's Debt; and becauſe this Member, as univerſal Succeſſor, *titulo lucrativo poſt contractum debitum* is libelled as an Alternative with the reſt of the Members, which infers *geſtionem pro hærede*, albeit cannot be counted of that Nature, in reſpect it is a Right eſtabliſhed in his Perſon *ante mortem defuncti*, and nothing done *ante mortem defuncti*, can infer *geſtionem pro hærede*: And further, he has not *jus deliberandi* within Year and Day; for albeit

lbeit he would renounce the Lands wherein he is nfeft, yet the Lords will not ſuffer him, but bind im to the Payment of all the Debt before the Fee, lbeit the Debt exceed twice the Fee, which in ny Judgment is nowiſe equitable.

Of moveable and heritable Bonds.

99. *Item*, The Diſtinction betwixt a moveable and heritable Bond of old was this, *viz.* The moveable Bond was, that which was made to he Creditor by ſimple Bond, for Payment of the Money at any Term, with a Penalty, and did not contain Obligement to infeft in Annualrent, nor o pay Annualrent to the Creditor, as well infeft s not infeft; and an heritable Bond was, where he Debitor ſold Lands or Annualrents out of his Lands, under Reverſion of the principal Sum which was lent to him by the Creditor; and alſo containing Requiſition of the Debitor, for Payment of the principal Sum upon Forty Days Warning, more or fewer, as the Party pleaſeth.

100. *Item*, This heritable Bond was made moveable, by uſing Requiſition for the principal Sum, conform to the Condition of the Bond, and by raiſing and uſing Letters of Horning thereupon, for Payment of the principal Sum. But if the Creditor, after Requiſition, received Annualrent, the Bond ceaſed to be moveable, and returned to its own Nature.

101. And this Diſtinction of moveable and h
ritable Bonds, as it was juſt, ſo it was neceſſary,
reſpect of the Diſtinction of an heritable Right a
Infeftment, which makes an heritable Bond juſt
to be accounted *Heritable*, to which the Heir ha
only Right, and not the Executor: For as t
Heir (if Infeftment had followed) could only
ſerved to the Annualrent, ſo he has only Right
crave the Infeftment to be expede to him, whic
was not done to the Defunct; and is in the Caſ
as if the Defunct had bought Lands either abſolut
ly or under Reverſion, and died before he got I
feſtment. And this Diſtinction is neceſſary alſ
becauſe it diſtinguiſheth betwixt that which is due
the Heir, and that which is due to the Executor; b
twixt that which is due to the Relict, and th
which is due to the Bairns; and alſo diſtinguiſhet
betwixt what Debts ſhould be paid by the Heir, an
theſe that ſhould be paid by the Executor, or where
of the Heir might crave Relief of the Executo

102. But now the Forms of Bonds are ſo con
ceived, and the Lords decide ſo uncertainly, tha
it is exceeding hard to diſcern the Diſtinction be
twixt heritable and moveable Bonds; for firſt, th
Bonds are now conceived, bearing a Clauſe of *An
nualrent*; and after that a Proviſion, *That th
Creditor ſhall have Power to crave his principa
Sum at any Time, without Requiſition*; Which
confounds the Nature of heritable and moveable
Bonds: For in the beginning of the Bonds, they
are conceived *heritable*; and by a poſterior Clauſe,
the ſame are made *moveable* at the Pleaſure of the

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editor, without expreſſing any external Act to inguiſh whether it be heritable or moveable.

103. *Item*, The Lords, in the Deciſion of theſe nts, have been uncertain; for ſometimes they ged no Bonds to be heritable, except they bore lauſe to infeft: Othertimes they found a Bond itable without a Clauſe of Infeftment, if it bore Obligement to pay Annualrent to the Creditor, well infeft as not infeft. And laſt, they have nd it heritable, albeit it want both Clauſes, if it rs Obligement to pay Annualrent.

104. *Item*, The Bonds which commonly bear ligement for Payment of Annualrent ſimply, r firſt an Obligement to pay the principal Sum a certain Time; and in caſe of Failzie, to be at Pleaſure of the Creditor: Whereupon it often s out to be diſputed, if the Bonds be heritable moveable, *ante eventum termini*. Which Que- on falleth out if the Creditor die before the Term, if the Creditor be denounced Rebel before the rm: And in theſe Caſes the Lords have found Sum to pertain to the Executor, and not to Heir. Or if the Creditor was denounced be- e the Term, they have found the Sum to fall in cheat to the King, by Eſcheat. And if the bitor die *ante terminum*, they find it a Debt yable by the Executor, and whereof the Heir will relieved, if he be compelled to pay *poſt annum diem*, in reſpect the Creditor hath Power to rſue whom he pleaſeth *poſt annum & diem*; and the Debitor die *poſt terminum*, the Bond will be unted heritable *quoad* the Heirs of the Debitor,

al-

albeit it may be moveable *quoad creditorem*, if h
died before the Term, and will pertain to his Exe
cutors, & *contra*. If the Creditor died after th
Term, it will be heritable *quoad eum & ejus hære
des*; and yet it will be moveable *quoad debitorem*
if he died before the Term. Of old, the Lord
would grant No-Proceſs againſt the Executor fo
an heritable Bond, but now they grant Proceſs
And there is no Law to give the Executor Relie
againſt the Heir, as the Heir hath againſt the Exe
cutor for his Relief, when he pays a moveable
Debt; and which is worſe, the Relict and th
Bairns are defrauded, by this Confuſion, of thei
natural and legal Portion, ſeeing the Executor will
only be obliged to make Count to them of the In
ventary of the Teſtament, with Deduction of the
heritable Debt which they have been compelled to
pay.

Of Heirs.

105. *Item*, Albeit the Heir may be purſued *poſt annum & diem*, yet becauſe there are di-
verſe Sorts of Heirs, as the Heir general, Heir of
Line, Heir of Tailzie or Proviſion, Heir of Con-
queſt, and Heir of ſecond Marriage: Therefore
it is expedient to know by what Method the Heir
is to be purſued; wherein this Courſe hath been
conſtantly kept by the Lords, That the general
Heir, or Heir of Line, ſhall be firſt purſued and
diſcuſſed before the Heir of Tailzie, and Proviſion,

and

Conqueſt, and Marriage: And when the Heir Line is diſcuſſed, then the Purſuit is ſuſtained inſt the remanent.

06. *Item*, The Heir of Line is properly *in ſuc-ſionibus ex linea recta*, and general Heirs com-hend both *in recta & collaterali*; and in *recta a* there may be Heirs of Line of the firſt and ſe-d Marriage, and Heirs of Tailzie and Proviſion them, but not of Conqueſt, which has only ce in *ſucceſſione collaterali*.

07. It may be queſtioned whether the Heir of ſecond Marriage, or the Heir of Tailzie, ſhould irſt diſcuſſed? It would appear that the Heir ailzie ſhould be firſt diſcuſſed, becauſe the He-ge is parted betwixt him and the Heir of Line: what the Heir of the ſecond Marriage has monly, he has it by Virtue of his Parents Con-t of Marriage; and the Heir of the ſecond rriage is not *hæres alioqui ſucceſſurus*, but al-rly by Proviſion. And on the other Part it is e conſidered, that the Heirs of the firſt and ſe-d Marriage may be either both Male or both Fe-e, or the one Male and the other Female; where both, or any one, is Male, there is no ce for the Heir of Tailzie, which is made for uding the Female: And therefore the Que-n will fall to be decided, where the Heirs of the and ſecond Marriage are both Females; in ch Caſe they are both Heirs of Line, and ſo t firſt be diſcuſſed before the Heir of Tailzie.

08. *Item*, The Heir general muſt firſt be diſ-ed, before the Heir of Conqueſt: And in Suc-ceſſions,

ceſſions, Heritage deſcends, Conqueſt aſcends, and that is counted Heritage, to the which not only the Defunct ſucceeds as Heir to his Predeceſſors, but that alſo wherein he was infeft by his Predeceſſors, he being then apparent Heir.

109. *Item*, If the Heir of Conqueſt be once infeft, then the Conqueſt changeth its Nature, and will not aſcend, but deſcend.

110. *Item*, The general Heir falls to the Heirſhip-Goods, and alſo hath Right to Tacks of Lands or Teinds, becauſe nothing is counted Conqueſt, but whereupon Infeftment had or might have followed; and therefore it may be doubted, if heritable Bonds bearing Obligement of Annualrent, but not Obligement to infeft, ſhould pertain to the Heir of Conqueſt, or to the Heir general.

111. And ſicklike the Heir general will have Right to Reverſions and Aſſignations to Gifts of Ward, Nonentry and Eſcheat; but with this Caveat in Reverſions, That if the ſame be of Lands to which the Heir of Conqueſt doth ſucceed, in that Caſe, they will pertain to the Heir of Conqueſt, and not to the Heir general: As was decided betwixt *Robert Pitcairn* Abbot of *Dunfermling* his Heirs, *&c.*

112. And ſicklike the Heir general has Right to the Office of Tutory of the Son and Daughter of the Defunct, and in reſpect thereof hath this Advantage, That he may procure the Bairn to enter Heir to his Father; which being done, the Lands ceaſe to be Conqueſt, and become Heritage: And if the Bairn dies without Heirs of his Body,

Body, the Tutor will ſucceed and his Heirs to the Lands, and not the Heir of Conqueſt; whereas if the Bairn had died not infeft, the Lands would fall to the Heir of Conqueſt, and not to the Heir general: And the Reaſon of the Difference is, becauſe in the laſt Caſe the Heir of Conqueſt is to be ſerved to the Lands, as Heir, not to the Bairn, but to his Father. And in the other Caſe, the Tutor is to be ſerved to the Lands, as Heir to the Bairns who were laſt infeft, and not as Heir to the Father, in whoſe Perſon it was Conqueſt.

113. *Item*, In Succeſſions the Male doth exclude the Female, except only in a Caſe which is ſingular by the Practick of *Scotland*, which is this, That the Siſter-german is preferred to the Succeſſion of Lands and Heritages wherein her Brother-german died laſt infeft and ſeaſed, and excludes the Brother who is in the ſame Degree with the Defunct, but not German, but only Father's Bairns, albeit if his Brother had died uninfeft, the ſecond Brother being of the other Marriage, would have ſucceeded to the Lands, *& ratio differentiæ eſt*, becauſe the Brother, albeit not German *quoad patrem*, is preferred to all the Females, but not ſo *quoad fratrem*, who is infeft after the Father's Deceaſe; for in this Caſe the Practick of the Country prefers the Siſter-german: So that in this Caſe, as in the former, the paſſing or not paſſing of Infeftments alters the Caſe and Courſe of Succeſſion.

114. *Item*, The like Caſe is where a Number of Daughters ſucceed to the Father, who ſucceed *pro æquis portionibus ubi non eſt maſculus*; and if the

Daughters ſome of them be German, and ſome on
ly on the Father's Side: If one of the German
die infeſt, her Siſter-german ſucceeds to her, an
not the remanent; but if ſhe die uninfeſt, *omne*
ſuccedunt ex æquo. And ſicklike, where a Numbe
of Siſters did ſucceed to the Father, and one o
them die leaving behind her a Bairn; if the Bair
die not infeſt, the remanent Siſters-german, *ſucce*
dunt ex æquo, becauſe they are to be ſerved Heir
to their Siſter who died laſt veſt and ſeaſed, or t
the Father, if their Siſter was not infeft. But i
the Bairn was infeft, either as Heir to the Mo
ther, or as Heir to the Mother's Father; in tha
Caſe, becauſe the Succeſſion muſt be to the Bair
who died laſt veſt and ſeaſed, therefore it muſt go
to the neareſt of Kin on the Father's Side, and no
on the Mother's Side: And therefore the Brothe
or Siſter of the Bairn deceaſed (if there was an
of the ſecond Wife's) would be preferred to th
Succeſſion; and where there was none, the Fa
ther himſelf will be preferred; and failzieing o
him, his neareſt of Kin upon the Father's Side.

115. But it is to be conſidered, that ſeeing thi
Diverſity is only in reſpect of Infeftment, tha
therefore in the Caſes where there is no Infeftmen
either not requiſite, or not paſt, the Heir to th
Defunct is the neareſt upon the Father's Side: As
for Example, If one die leaving three Daughters
and that he had Right to ſome Reverſions an
Tacks of Lands; and if one of the Daughters die
leaving a Bairn, who before its Deceaſe was ſerve
and retoured general Heir either to his Mother o
Goodſire;

oodfire; in this Case, *jus est acquisitum perfectè* the Bairn: Which after the Bairn's Decease, ls to the neareſt of Kin on the Father's Side, d not on the Mother's Side. And ſicklike, if e Father of the three Daughters had heritable onds or Contracts whereupon he got no Infeſtent before his Deceaſe; in this Caſe, the Bairn the Siſter-Deſunct being retoured general Heir, ſaid is, tranſmits the Right to the neareſt of n upon the Father's Side: But if either the Faer or three Daughters were infeft upon heritable onds or Contracts, or if the Daughter deceaſed tained herſelf infeſt upon the heritable Bonds or ontracts; in theſe Caſes, or either of them, the irn being only ſerved general Heir, but not inft, would not tranſmit the Succeſſion to the Fa-er's Side, but to the Mother's Side; becauſe eier the Mother or the Mother's Father died laſt ſt and ſeaſed, to whom the Heirs of the Bairn the Father's Side cannot poſſibly ſucceed.

Of Ward and Nonentry.

16. *Item*, If the Lands which pertained to the Deſunct hold Ward of the Superior, the eir being Minor cannot enter till he be of perfect ears, which in the Male is Twenty one, and in the emale Fourteen Years: But if the Superior diſnſe with the Minority, they may enter; and e King's Majeſty does never refuſe to grant Diſnſation (which paſſeth the Caſhet and Signet

only) providing the Donator crave the ſame, and conſent thereto; otherwiſe the Licence and Diſpenſation bears this Clauſe, *That it ſhall be but Prejudice to the King and his Donator to the Right of the Ward.*

117. *Item*, The Donator to the Gift of Ward may enter immediately to the Lands without a Declarator, and may uplift the Mails and Duties, and warn the Tenants to remove: And the common Exception that uſes to be proponed in Removing is, That the Defenders are Tenants to ſuch a Perſon who is heritably infeft, and he not warned, is not relevant againſt a Donator to a Ward, becauſe the Donator during the Time of the Ward is in Place of the Maſter, and ſo there was no Neceſſity to warn the apparent Heir of the Maſter.

118. *Item*, The Tacks or Infeftments made by the Defunct will not defend the Tenants or Perſons to whom the ſame is made from the Donator's Action of Removing: And albeit the Infeftment be confirmed by the King, except the ſame be given to be holden of the King, yet the ſame will not defend againſt the Removing; and the Reaſon is, becauſe all Confirmations granted by the King bear this Clauſe, *Saving and Reſerving to his Majeſty and his Succeſſors the Rights, Duties and Services due to them forth of the Lands whereof Confirmation is granted.* But where the Infeftment is given to be holden of the King, and confirmed, that ſtays the Ward *pro tanto*, becauſe the King cannot have the Ward of the Lands wherein he has a Vaſſal living; but the Ward is ſuſpended. I the

he Infeftment confirmed was temporal, and for ifetime only; as is commonly in Infeftments anted by the Husband to the Wife, and if the nfeftment confirmed was heritable, then the ard could not vaick by the Deceaſe of the iſponer, nor by the Minority of his Heir; beuſe he was fully diſſeaſed of the Right of the ands before his Deceaſe.

119. *Item*, The Relict will have Right to the erce, notwithſtanding of the Ward.

120. *Item*, If the Heir enter not after the Exring of his Minority, then the Lands are in Nontry, and not in Ward, becauſe the Ward is end; and during the Ward it could not be called *Nonentry*, becauſe the Heir could not enter; and herefore Nonentry begins after Expiring of the ard: But the Nonentry ſubſequent to the Ward, of the Nature of the Ward, and not of the Nare of common Nonentry, eſpecially if the Wardar be in Poſſeſſion; for then he continues his Poſeſſion without obtaining Declarator upon the Nontry, and he has Right to the full Mails and Duies, and may remove Tenants, as he did the Time f the Ward: Whereas in Nonentry, there is not Title and Right without a Declarator; and hen the Declarator is obtained, there is no more ue for the Years preceding the Declarator, but he retoured Duty, if any be: But where no Reour is, in that Caſe the Donator to the ſimple onentry will have Right to the full Mails.

121. But it is to be conſidered, that the Nontry ſubſequent to a Ward, pertains not to the

Donator of the Ward, except for three Terms after Expiring of the Ward; for after that, the second Donator will have Right. Likeas also the first Donator to the Ward, if the Heir come to Majority, and might have entred, but deceaseth before he entred *de facto*, leaving behind him a Son or Brother, Minor; in this Case, the first Donator has no Right to the Ward of new, falling by the Minority of the second Heir; but the King hath Power of new to dispone the Ward to a second Donator: And there is no other Right granted but three Terms after the Expiring of the Minority, albeit it might seem that it is not a new Ward, but the same vacking by the Decease of one and the self same Fiar; and the Gift granted by the Fiar bears the Ward to be disponed for all Years since the decease of the Fiar, and ay and while the Entry of the righteous Heir; but the Lords sand, That ay and while the Entry of the righteous Heir respected not *actum*, but *facultatem vel potentiam*, and *in rei veritate*; the decease of one Fiar, and the Unity of one Person deceasing, infers not the Unity of Vacation, neither of Ward nor Marriage. But it is enough, that the Lands hold Ward of the King, and that any of the Predeceſſors was infeft holding Ward; for otherwise it should be in the Power of the Vassal and his Heirs to hinder and impede the falling of the Lands in Ward and benefit of the Marriage, by not entring: And albeit the King, or any other Superior, might compel the Heir to enter, or otherwise to bar them from the Lands by the

Non-

Nonentry, either ſimple, or by that which is ſubſequent to the Ward; yet it is not reaſonable that the Superior's neglecting of his own Benefit in bygone Time, ſhould prejudge him of the Ward and Marriage hereafter, when the ſame vaicks: And this was found *quoad* the Ward, in an Action purſued by the King's Majeſty, then being Duke of *Albany*, and Donator to the Ward of the Living of *Buchan*, againſt *William* Earl of *Morton*, being firſt Donator thereto. And the other, in the Matter of Marriage, was found betwixt Sir *John Home* of *North-Berwick*, Donator to the Marriage of *Adam French* of *Thornidykes*, againſt *John Cranſton* and the ſaid *Adam* his Siſters, who came to the Lands by deceaſe of their Brother. But it is to be obſerved, that if the firſt Heir (by whoſe Minority the Ward vaicks) deceaſeth Minor; in that Caſe there is no new Vacation of the Ward, but the firſt Ward continues in Favour of the Donator. And ſicklike, if the firſt apparent Heir die unmarried; in that Caſe the Marriage of the next apparent Heir will pertain to the firſt Donator, and not to a ſecond. But it may be doubted, if the firſt Heir die married, but Minor, and not infeft, whether the King's Majeſty falls to the Marriage of the next apparent Heir, being unmarried, which may be diſputed *in utramque partem*. And for the Vaſſal it may be alledged, That the King cannot fall by the Deceaſe of one and the ſame Vaſſal, but to one Marriage, eſpecially where the apparent Heir, who was married, died Minor, and not infeft, *neque actu, neque potentia*. Next, That the

Avail of the Marriage cannot be craved but at the perfect Years of the apparent Heir, becauſe he cannot pay the Avail, but by giving Security of his Lands; which he cannot do, if he be not infeft, nor able to obtain himſelf infeft. But on the other Part, it may be urged for the King's Majeſty, That he might have the Marriage of the apparent Heir of his Vaſſal, one or more, as the ſame falls out; and he doth fall the Marriage of all the Females, albeit there were never ſo many of them. And as the King's Majeſty continues his Benefit of the Ward, ſo the ſecond Marriage is but a Continuation of the firſt: And albeit the King's Donator can but crave one Marriage, in reſpect of the Conception of the Gift, which bears the Marriage of the firſt apparent Heir *nominatim*; and in caſe of his deceaſe unmarried, the Marriage of the next apparent Heir: Yet it cannot exclude the King's Majeſty from diſponing of the ſecond Marriage when it vaicketh.

122. But all Things being pondered, it ſeems that the Deciſion, in Juſtice, muſt fall in Favour of the King or any other lawful Superior, to have all the Marriages as they vaick: But in this Caſe the Lords will have a Care of the Modification of the Avail; and ſo the Lords inclined in this Caſe, in *Northberwick*'s Action and *John Cranſton* the King's Donator, of the Ward of Marriage of the Daughters; for the Lords gave the Benefit of the two Marriages to two Donators, but modified the Avail of the firſt Marriage to a very mean Matter: But yet the Lords found, That the Avail of the

firſt

rſt Marriage, modified, as ſaid is, ſhould be paid y the Daughters, albeit they were neither Heirs or Executors, but as Heritors of the Lands by hich the Marriage fell; and found, That the ids Lands might be poinded, diſtrinzied, and aprifed for the ſame, and ſo found the Right of the Marriage real *contra fundum*; which was well deided, becauſe the Marriage is a Part of the *Redendo* due to the Superior, whereof he cannot be efrauded by the Nonentry of the apparent Heir o the Lands.

123. *Item*, It is to be remembred, That the Ward and Marriage cannot vaick to the King, but y the Death of one who was either actually infeft n Ward-Lands, or might have been infeft as pparent Heir to one of his Predeceſſors: But if he King's Vaſſal was denuded of the Right of the Ward-Lands by Reſignation in the King's Hands, n favours of his eldeſt Son, and apparent Heir, reerving his own Liferent, with the Reverſion, upn a Roſe-noble, whereupon his Son was ſeaſed efore his Fathers Deceaſe. In this Caſe there is o Vacation of Ward, or of Marriage by the Deeaſe of the Father, becauſe he was not the King's eritable Vaſſal before his Deceaſe, but was denuded in Favours of his Son, *ut ſupra*.

124. *Item*, When the Heir of Ward-Lands is ajor, and craves to be entred, he muſt pay to is Superior a Relief for relieving him out of his Ward; which Relief is the retoured Duty of the Lands for one Year, and that by and attour the Nonentry, if the Lands be found by the Retour to have

have been in Nonentry for the Space of one Ter
or more, after expiring of the Ward.

125. *Ad imitationem* of this Relief in war
Lands, the Vaſſals of blench Lands do pay alſo
Relief at the Entry of the Heir, but that is onl
the Duplication of the blench Duty: And as t
Feu-Lands, the Clauſe of the Charter commonl
bears, *Duplicando feudifirmam primo anno intro
tus*; and if the Charter bear it not, yet the Cu
ſtom of the Chancery, is, not to give out a Pre
cept upon a Retour, but with the Clauſe, *Capien
ſecuritatem pro duplicatione feudifirmæ.*

Old and new Extent.

126. *Memorandum*, The Retour of ward an
blench Lands, differ not in Form, bu
is ruled according to the Cuſtom of the Shir
where the Lands are retoured, without Reſpect o
the holding blench or ward; but the retoured Du
ty of the Feu-Lands, is always the Feu-duty: An
as to the Quantity of the retoured Duty in blench
and Ward-Lands, it is ſometimes the double
ſometimes the triple or quadruple, ſextuple or ſep
tuple of the old Extent of the Lands in every Shire;
as in *Fife*, commonly fifth or quadruple; and i
the *Weſt*, it is commonly the ſixth or ſeptuple;
whereof they complain not ſo much for the Re
tours, but becauſe their ſimple Mail of old Exten
was too high, according to which they pay th
King's Taxation; and in the *Merſe*, and othe
Pro-

rovinces bordering with *England*, the retoured uty is only the ſingle or the double of the old xtent at furtheſt.

127. And the Reaſon of the Difference of the eight of the new Extent may be taken from the ime and Reaſon of ſetting the ſame; for the old xtent was made in Time of Peace, and the new xtent was made in Time of War; and in reſpect ereof, the Places of the Kingdom neareſt to *England*, with whom we had Wars, and who were often employed for Defence of the Kingdom, had eir new Extent made to the double, ſimple, quaruple, *&c.* And the Places more remote, as *Galway*, and far North, had their new Extents made the ſextuple or ſeptuple: But this is not neſſary, but probable; only this is certain, That ere were two Extents made of the whole Lands the Country, according to the Worth and Eſtiation at the Time; whereof one is called the d Extent, which was taken *tempore pacis*, and e new, which was taken *tempore guerræ*; and acrding to the old Extent, every Pound Land pays thin the Kingdom its Taxation to the King, unting 30 Shill. for each Pound Land at each erm, which was Three Pound a Year, when the axation was *L.* 10000, which makes the old Exnt of the whole Lands come to 33333 *l.* 6 *s.* 8 *d.* thereby.

128. New Extent, is that which we call the reured Duty, whereof the Reaſon is, becauſe all rieves bear this Clauſe, *Et quantum valuerunt ctæ terræ olim vel tempore pacis, & quantum nunc valent*

valent tempore guerræ; and therefore the Inqueſt in the Service of their Brieve, are bound to inſer this Point as well as the reſt; and becauſe the An ſwer or Service muſt be returned to the Chancery after which the Service is called a Retour: There fore the new Extent mentioned in the Service an Retour, is called the *Retoured Duty*; and the ol Extent cannot be called the retoured Duty, albe it be contained in the Service or Retour, becau the Vaſſal is bound when he enters to his Lan upon his Service, to pay the new Extent to th King, either for Relief or Nonentry, but not th old Extent.

129. *Item*, The Director of the Chancery, up on their Service being retoured, directs Precept incloſed in white Wax, as the Brieves are to th Sheriff of the Shire where the Lands ly, whic Precept bears a Command to the Sheriff to giv Saſine of the Lands to the Perſon who is ſerve and retoured Heir to his Predeceſſor, but with thi Clauſe, *Capiendo ſecuritatem pro decem aut vigint libris, &c.* or ſo much more as the retoured Dut comes to yearly, for ſo many Years as the Land by Retour are found to be in Nonentry; and al ſo for a Years Duty of the new Extent or retoure Mail *pro relevio*, if they be Ward-Lands; and i they be blench, for Duplication of the blench Du ty, and if they be Feu, for Duplication of the Feu Duty; and at the Delivery of this Precept of Sa ſine by the Director to the Party, there is inſer by the Director in his Book, called, *The Book o Reſpondeo*, a Note of the Sums, for the which th

She

eriff ſhall take Security in this Form, *Reſponde-
vicecomes pro ſumma & ratione ſaſinæ, &c.
andæ tali, &c. de terris, &c.* And according to
is *Reſpondeo*, the Sheriff is charged yearly to
ake his Accompt to the Exchequer, which is
ld yearly in *July*.

130. Conform to this Precept, the Sheriff, when
e ſame is preſented to him, takes good Security
m the Party for Payment of the Money con-
ned in the Precept, and thereafter gives Saſine,
d for giving Saſine, takes a Saſine Ox: And al-
it the Precept be not preſented to the Sheriff,
r Saſine taken thereof, yet the Sheriff, by Cu-
m of the Exechequer is ſtill charged with the
eſponde, and compelled to pay the ſame, where-
there is no probable Cauſe but this, That it is
eſumed, that the Party Raiſer of the Precept
ll not neglect to take Saſine on the Precept, e-
ecially ſeeing it bears this Clauſe, *Præſentibus poſt
oximum terminum minime valituris.*

131. But albeit Saſine be taken, and Security
ven for the Money contained in the Precept, yet
on Supplication of the Party, who was ſeaſed,
ade to the Lords of Exchequer, craving to be
eed of the Payment thereof, upon ſome juſt Rea-
n, whereof this is commonly one, That the Gift
the Ward and Nonentry was diſponed to him-
lf, or to a Donator, to whom he has given Sa-
sfaction; the Lords will relieve both the She-
ff, and the Party Giver of the Security: But al-
it the Party ſhow a Gift of Ward, Nonentry,
nd Relief, and therefore be freed from the By-

runs

runs, yet he will be never freed from Payment of the Relief, albeit it be contained in the Gift, because such is the Custom of the Exchequer.

132. *Item*, It is to be remembred, That albeit there be Gift granted of Nonentry or Ward simply, yet if the same be taxed, the simple Gift will not comprehend the Taxt, except the Taxt be disponed expresly; *ratio est*, because the Taxt-duty being liquid by the Infeftment, is a Part of the King's proper Rent and Duty; whereas the other is a Casuality only; for the Taxt-ward and Nonentry may be craved, and the Ground poinded therefore, notwithstanding that all the Years of the Ward are expired: But in a simple Ward, the Ground cannot be poinded, but the Action is only competent against the Intromitters with the Mails and Duties; for a Taxt-ward is of the Nature of a Feu-duty during the Time of it, or of Annualrent disponed furth of the Lands, and a simple Ward is of the Nature of an Infeftment of Property, *ad tempus*.

Precepts directed to the Superior.

133. WHere Lands are retoured to be holden of another Superior than the King, in this Case the Director of the Chancery, at the Request of the Party, gives forth Precepts closed in white Wax, directed to the Superior of the

e Lands, commanding him to infeft his Vaſſal the Lands to the which he is retoured Heir, e Vaſſal doing that to the Superior, which he is liged to do of the Law, upon which Precept the aſſal either perſonally or a Procurator for him, es to the Superior, and requires him to give In-ftment; which Infeſtment, otherwiſe called Pre-pt of Saſine, the Vaſſal or his Procurator pre-nts to the Superior, written *in mundo*; and if the perior refuſe or delay, takes Inſtrument there-on in Preſence of a Notar and Witneſſes, and turns the ſame to the Director, who thereupon ves forth a ſecond Precept, called *Meminimus*, herewith the Superior is of new required, and In-ruments taken, *ut ſupra*; upon the Report where-there is a third Precept directed, called *Furca*, hich is uſed by the Vaſſal, according to the other o; and upon the Report of this laſt, the Di-ctor gives a Precept to the Sheriff of the Shire here the Lands ly, commanding him to give the aſſal Saſine of theſe Lands, in reſpect of the perior's Contempt. But commonly the Superi-s, before the directing of the laſt Precept for giv-g of Saſine, uſe to paſs Suſpenſions before the ords of Seſſion, and ſummons the Vaſſal to com-ar before the Lords, to hear and ſee the Charge iſed upon theſe Precepts ſuſpended; which Suſ-nſion is commonly granted by the Lords, by onfignation of a Precept of Saſine ſubſcribed by e Superior; and at the Day of Compearance, e Reaſons of Suſpenſion are diſcuſſed before the ords, and Juſtice done therein, according to the

Re-

Relevancy thereof. The Reaſons of the Suſpenſion are commonly theſe, That the Precepts are conditional, *Vaſſallus faciendo ſuperiori, quod de jure facere oportet*; and that by the Retour the Lands are found to be in Nonentry ſo many Years, which muſt be paid; which Reaſon is relevant in the Law, and admitted by the Lords becauſe, as it is the Condition of the Precept, ſo it is verified by the Retour.

134. But there be many other Things due to the Superiors, whereupon alſo they uſe to found the Reaſons of Suſpenſion; ſuch as the Feu-duty owing of divers Years bygone, the Liferent of the Vaſſal deceaſed, or the apparent Vaſſal being Year and Day at the Horn, the Lands fallen in the Superior's Hands by Recognition, either by the Nature of the Holding, as being Ward, or by a Clauſe irritant, not to annailzie without the Conſent of the Superior: but none of theſe will be found a relevant Ground of Suſpenſion; and notwithſtanding thereof, the Precept conſigned by the Superior will be ordained to be given up to the Vaſſal, only the Lords reſerve to the Superior his Right and Action againſt his Vaſſal for the ſaid Duties and Caſualities.

135. But it is to be remembred, That where the Superior is willing to enter his Vaſſal, there is no Neceſſity to the Vaſſal to retour himſelf to the Lands; but the Superior may infeft him in the Lands as Heir to his Father by a Precept of *clare conſtat*; and Saſine taken upon this Precept

ept, gives the Vaſſal as good Right to the Lands, s if he had been retoured.

Precepts of Saſine and Clare conſtat.

136. BUT there is a Difference betwixt a Saſine upon a Retour, and a Saſine pon a Precept of *Clare conſtat*: The Saſine upon e Retour verifies him to be Heir to his Predeceſ- r, & *active & paſſive*; but the Saſine of *Clare nſtat* only *paſſive*, except againſt the Superior, *ntra quem valet utroque modo*; and alſo is valid *uoad* the real Rights of theſe Lands as fully as pon a Retour.

137. And further it is to be adverted, That the uperior by ſuffering his Vaſſal to be entred by e Sheriff, tines nothing but the Saſine Ox; for otwithſtanding thereof, he remains Superior as efore.

138. For it is to be conſidered, That this Form Precept againſt the Superior for infefting his aſſal, is only in this Caſe, where the Superior ands infeft in his Superiority; but where he is not feft, and only apparent Heir to the Superiority; this Caſe the Vaſſal craves no Precept upon his etour, becauſe it would be unprofitable to him be infeft by one who is not infeft himſelf, but llows the Order preſcribed by the Act of Par-

liament *James* III. anent charging the Superior apparent Heir to enter to the Superiority within 40 Days if he be within, and upon 60, if he be without the Kingdom.

Tinſel of Superiority.

139. AFter which Charges, the Days being expired, the Vaſſal raiſeth Summons upon 21 Days Warning before the Lords; and alſo againſt the Superior's Superior, to hear and ſee his own Superior tine his Superiority, during his Lifetime; and the mediate Superior to be decerned to enter and receive the Vaſſal to the Lands; upon which Summons, if the Vaſſal get a Sentence and Decreet, then the Superior is decerned to tine his Superiority, and *de facto* tine it during his Lifetime, and all Caſualities thereof.

140. But it is to be remembred, That if the mediate Superior be not infeft, the Vaſſal will be compelled to take out his Decreet of Tinſel of Superiority, and thereafter to raiſe the like Charges againſt the mediate Superior, to enter to his Superiority with Certification, *ut ſupra, & ſic de inceps*, againſt all other Superiors interjected, while he come to the King; and the Summons concludes againſt the Director, to give forth Precept for ſeaſing the Vaſſal in the Lands.

141. *Item*, If the Superior holds the Lands Ward, and be Minor, and unentred, he may be charged by

y his Vassal to enter to his Superiority within o Days, and summoned to that Effect; but the Lords will not decern him to tine his Superiority *durante warda*, but only declares the Diligence one by the Vassal, to be as effectual to him, as if he was seased, both for staying the Nonentry of the Lands, (if any be) in respect of the Superior; nd also in respect of the Vassal *quoad effecta proprietatis* against his Tenants, and others having nterest.

142. *Item*, It is much questioned, in the Case where the Superior is decerned to lose the Superiority, whether he tines it during his own, or his Vassal's Lifetime, or both, whilk hath great and robable Reasons on all Sides: For if the Superior, who was decerned to tine the Superiority, decease; and he who succeeds to him, enters to the uperiority, it would seem reasonable that the Vassal should become Vassal to him who thus enters, and not remain Vassal to the Superior mediate; whereof this may be a great Argument, That the mediate Superior receiving the Benefit hat is due to him by Law, by the Entry of his wn Vassal, whereby he will fall all the Casualies of the Superiority, which will justly pertain to im, as the escheat of Liferent, *&c.* that therefore e should not also retain the Casualities which ay vaick to him as Superior to his Vassal's Vassal.

143. On the other Part it is urged, That the ub-vassal being entred by the mediate Superior, nd become once his Vassal, cannot cease to be his

Vaſſal, without his own Conſent, ſeeing he has th Benefit, *vel jus quæſitum quod non poteſt ei invi auferri, viz.* That he holds either immediately the King, or of another mediate Superior, b which he has fewer Superiors interjected betwi him and the King.

144. *2do*, The Sub-vaſſal is not put *in tut* for it may be that the Superior ſhall die ſhort after he enters *eo vivente*; and that the next Suc ceſſor ſhall ly out of the Superiority; in whic Caſe he ſhall ly under the Danger of Nonentr for Fault of a Superior, and not get a Superior ti he uſe the former Order.

145. *3tio*, The mediate Superior may be pre judged, becauſe albeit he get a Vaſſal by his Entry yet he only gets a Vaſſal of Superiority, and no of Property; ſo that if the Sub-vaſſal ſhould b Year and Day at the Horn, either before or afte the Entry of the immediate Superior, the Liferen of the Sub-vaſſal would pertain to the immedi ate Superior, who is newly entred, and not to th mediate Superior, *quod eſt abſurdum ex lege.*

146. *Item*, It is thought that the Superiorit muſt be loſt during the Lifetime of both conjunctly that is to ſay, of the Superior and Vaſſal, other wiſe, if the Vaſſal died, the immediate Superior who has loſt his Superiority, being alive, the Hei of the Vaſſal would not have a Superior to ente to, but would be forced to charge his immediat Superior to enter with Certification, That h ſhould loſe his Superiority, *quod eſt abſurdum*, be cauſe he has loſt it already.

147. Bu

147. But in this there would be a greater Que-
ion, if the immediate Superior did enter and ob-
in himſelf infeft befor the Vaſſal's Deceaſe: But
l theſe Queſtions I leave to be diſpute, becauſe
ey are not decided.

148. *Item*, To the Queſtion, this Conſideration
ay be added, What if the Vaſſal were to ſell his
ands? Whether the Confirmation of the mediate
uperior would be a ſufficient Right to the Ac-
irer or not? And the Reaſon of this Queſtion
, becauſe a great Part of the Right of the Lands
epends upon the Confirmation of the right Supe-
or; and, for clearing hereof, the Particulars fol-
wing are to be adverted to; for Lands may be
ld to be holden either of the Anailzier or of
e Superior: The firſt is called a baſe Infeftment,
d the other is called a publick Infeftment, *in-
oatione ſed non perfectione*, till it be confirmed.

Baſe and publick Infeftments.

149. A Baſe Infeftment being diſponed to be holden of the Diſponer being cloathed ith Poſſeſſion, is a perfect Infeftment *in ſuo ge-ere*, but is not ſo perfect and publick as the other be holden of the Superior.

150. A baſe Infeftment is ever to be preferred an Infeftment given to be holden of the uperior, if it be not confirmed by the Supe-ior, becauſe it is not an Infeftment till it is con-

firmed; and it is ſo null of the Law, that the Nullity thereof is ever received by Way of Exception, if the Title and Infeftment alledged to be null, bears to be holden of the Superior.

151. *Item*, Albeit it be confirmed by the Superior, yet the baſe Infeftment which cloathed with Poſſeſſion is preferred thereto, and the publick Infeftment confirmed, as ſaid is, will only carry the Receiver, to the Superiority of that baſe Infeftment, but the Property will pertain to the Poſſeſſor by Virtue of the baſe Infeftment.

152. This is true, not only where the baſe Infeftment is prior to the publick, but alſo where it is poſterior to the Charter given to be holden of the Superior, but before Confirmation thereof, *quia tunc medium impedimentum interveniens* of the baſe Infeftment cloathed with Poſſeſſion before the Confirmation, hinders the Confirmation to be drawn back to the Date of the Charter confirmed.

153. *Item*, Baſe Infeftment, whether anterior or poſterior to the Publick, if it be not cloathed with Poſſeſſion, but that the Publick be confirmed before they apprehend Poſſeſſion, will be poſtponed to the Publick, and the Publick preferred thereto. But this ſuffers an Exception of baſe Infeftments granted by Husbands to their Wives, depending upon Contracts of Marriage, which in Favour of Marriage are accounted both publick, and cloathed with Poſſeſſion, in reſpect it is eſteemed that the Husband bruiked the Property by his Wife's Right, and that his Poſſeſſion was her Poſ-

ſeſſion

ſſion. But if the Infeftment granted to the ife, was granted *ſtante matrimonio*, and baſe, d that by and attour the Lands to the which e was provided by Contract of Marriage, in that aſe her baſe Infeftment has no Privilege before a ublick, except it be cleared that there was no ontract of Marriage at all, and that ſhe had itted the Lands to the which ſhe was provided the Contract of Marriage, and gotten the other r the ſame; in which Caſes ſhe will bruik her ands with the like Privileges, as if the ſame had pended upon the Contract of Marriage: For here there is no Contract of Marriage betwixt e Parties, it is thought juſt and reaſonable that e Husband may give a conjunct Fee *ſtante matimonio*, providing it be effeiring to his Eſtate, and ot exorbitant.

154. *Item*, A baſe Infeftment apprehending oſſeſſion *per conſtitutum*, that is to ſay, where the ands are ſet in Tack to the Diſponer, for Payent of a Duty, which Duty is paid to the Reeiver of the baſe Infeftment, the ſaid Infeftment accounted cloathed with Poſſeſſion, *per hanc nſtitutionem civilem*, ſicklike as if he were natully in Poſſeſſion.

155. *Item*, The like is, where the Haver of a aſe Infeftment bruikes *per uſum fructuarium*, hoſe Liferent is given or reſerved in the baſe Infeftment.

156. But in theſe two laſt Caſes, the baſe Infeftment is only preferred to the Publick *inter extraneos*, *ſed ubi eſt inter ſuos & liberos ex una*, &

extraneos ex altera; the Strangers, with the Publick, are ever preferred to the Base granted by a Father to his Children, either *per constitutum*, or *per reservationem ususfructus*.

157. *Item*, Infeftments of Annualrent given base, are accounted cloathed with Possession after the Date of the base Infeftment, if the Giver thereof make Payment of the Annualrent for one Term or more, albeit this Payment being made by the Debitor, who is obliged thereto by his Bond, may as well be referred to the Bond, as to the Infeftment; and that the Creditor recived no real nor natural Possession by uplifting the Annualrent furth of the Lands, or from the Tenants Occupiers thereof.

158. *Item*, 'Tis thought that an Infeftment of Warrandice, albeit base, in Case of Eviction of the principal Lands, will be preferred to a publick posterior Infeftment, albeit the same did not apprehend Possession before the Eviction, in respect it could not apprehend Possession before it; and *fictione juris* the Possession of the Principal Lands is holden for Possession of the Warrandice; but this is not *sine suo scrupulo*, and may be made disputeable.

159. In the Concourse of two base Infeftments, the prior is ever preferred to the posterior, except the second be cled with Possession by the Space of Eight or Ten Years, in the which Cases the Possessors are preferred *in judicio possessorio*; That is to say, in Removings, and double Poindings, in which Case the Exceptions proponed upon the base

aſe Infeftment (albeit poſterior) cloathed with he ſaid Number of Years, is ever found relevant, otwithſtanding the other's Priority, except he an reply upon Poſſeſſion alſo apprehended by his rior Infeftment either civil or natural; but in *judicio petitorio, viz.* in Actions of Reductions, the rior baſe Infeftment is ever preferred to the poterior, without reſpect to the Poſſeſſion.

160. *Item*, That which is ſpoken of publick Infeftments to be holden of the Superior by Confirmation, is alike true in publick Infeftments of Lands or Annualrents granted to the Receiver by he Superior, upon the Reſignation of the Annailier for a publick Infeftment, upon a Reſignation nd Confirmation from the Superior, are alike in he Practick of *Scotland*, & *ſunt jure noſtro pares ermini*; and albeit they be alike *quoad ſuperiorem*, et they have ſome Imparity and Difference otherviſe: For an Infeftment upon Reſignation comprehends *univerſitatem jurium*, and ſpecially *omnia ura Reverſionum abſque ceſſione*; whereas an Infeftment confirmed doth not properly comprehend *ura Reverſionum*, except they be aſſigned; at leaſt t has often been diſputed, but never yet found fully reſolved.

161. *Item*, After Reſignation made by the Vaſal in the Superior's Hands (which is commonly done by Procuratory and Inſtrument of Reſignation) in Favour either of the Superior *ad remanentiam*, or in Favour of a third Party *in favorem*. The Reſigner can do no Deed in Favour of another Party, in Prejudice of the Reſignation made

ut

ut supra; and if betwixt the Resignation made in Favour of a third Party, and accepted by the Superior, the Resigner should give a base Infeftment of the Lands to be holden of himself, in Favour of another Person, that base Infeftment, albeit it should apprehend Possession, before the Superior grants the Infeftment upon the Resignation, yet the same will be null and reduceable, as granted *à non habente potestatem*, that is, by the Disponer who was denuded by the Resignation: And yet if the Disponer had denuded himself, not by Resignation, but by Charter to be holden of the Superior, and Sasine following thereupon, he might at all Times before the Confirmation of the said Charter, grant base Infeftment, which apprehending Possession before Confirmation of the said Charter, would be preferred to a publick Infeftment; so passing the Confirmation, as said is, *& ratio differentiæ est* because in the Resignation intervened *duplex actus*, one of the Resigner, another of the Superior accepting the Resignation: But in the other, there is only the Act of the Disponer; but not any Act of the Superior, till the Date of the Confirmation.

162. And albeit after the Resignation actually used, no base Infeftment can prejudge it, yet if after the Resignation used and accepted, the Resignant should make another Resignation in Favour of any other Party, whereupon the Superior should give Charter and Sasine; this second Resignation with Infeftment following thereupon, would be preferred to the said prior Resignation whereon no Infeftment followed; and the Reason of the Difference

ce is this, that albeit *utrobique eſt duplex actus*, the Deed of the Superior is *tantum actus imfectus, & inchoatus quoad eum, & quoad eſſe eriale, & eſſe formale & probatorium*; for the ceptation of the Superior has no other Warrand the Aſſertion of the Notary who was Notar to Inſtrument of Reſignation, which by the Law he Kingdom is not ſufficient in heritable Rights, will not compel the Superior (being otherwiſe illing) to give Infeftment conform thereto: d albeit the Inſtrument of Reſignation was seal- and ſubſcribed by the Superior the Time of the king thereof, which (*quoad eſſe probatorium*) ld have been ſufficient of the Law, yet it would be *jus reale* to the Perſon in whoſe Favour the ignation is made, but only be the Ground of a ſonal Action, to compel the Superior and his rs to give Infeftment conform thereto; and efore if a third Party ſhould either acquire the eriority from the Superior, and paſs Infeft- t thereupon; or if the Superior ſhould give ftment of the Property to any other Perſon n the Reſignation of the Vaſſal, who thereupon ld take firſt Saſine, there is no Queſtion but real Right either of the Superiority or of the perty, would fully ſubſiſt and ſtand in the Per- of theſe who received the foreſaid Infeftment, that notwithſtanding of the foreſaid firſt Re- ation made by the Vaſſal, and accepted by the erior, as ſaid is.

63. *Memorandum*, The Superior cannot be pelled either to accept a Reſignation, or to confirm

confirm an Infeftment, but at his own Pleaſur and Εισδεκτικὸν is commonly a Year's Duty t the Superior who receives a new Vaſſal, excep the King, whoſe Compoſition is made by the Lor of Exchequer.

164. The only Remede which Buyers have where the Superiors are unwilling to receive them is to compriſe the Lands from the Seller, where upon the Act of Parliament *James* III. 1469 they will compel the Superior to enter and receiv them, they paying a Year's Duty to the Superior by the Modification of the Lords.

165. *Item*, Albeit the Superior cannot be com pelled to receive a Buyer, yet he will be compelled to receive an Heir of his Vaſſal, by Payment o the retoured Duty.

Neceſſity of Confirmation.

166. *Item*, The Neceſſity of Confirmations to be paſt by the Superior is double; one for Perfection of the Right, if the Infeftment be given to be holden of the Superior; another for eſchewing of Dangers which may follow by Forfeiture and Recognition, if the Infeftment be given to be holden of the Diſponer.

167. *Item*, The Confirmation of all Kirk-Lands is neceſſary, by Act of Parliament; and the Want of Confirmation of Infeftments of Kirk-Lands renders the Infeftments null *ipſo jure*.

168. *Item*,

168. *Item*, The Confirmation of a base Infeftment saves from Forfeiture and Recognition, but not from Ward, except Infeftment be given to be holden of the Superior.

Of Wadsets, Reversions and Regress.

169. *Item*, Where Lands are disponed in Wadset, under Reversion, either the Wadset to be holden of the Disponer or of the Superior: If to be holden of the Superior, there is a Necessity of Regress to be granted by the Superior to the Vassal who gives the Wadset, otherwise when he redeems by Virtue of the Reversion, the Superior may not be compelled to receive him, because he did not consent to the Reversion, but only to the Alienation, which *quoad eum* was simple and absolute.

169. And if the King or any other Superior give Letter of Regress; in that Case, when the Order of Redemption is used and declared, the User of the Redemption is immediately seased, upon the Sight of the Regress and Supplication made to the Lords thereon, who will give Command to the Director to give forth Precepts for that Effect, if the Lands be holden of the King; or direct Letters of Horning to charge other Superiors to receive their Vassals.

170. *Item*,

170. *Item*, If the Wadset be given to be h den of the Disponer, in that Case, so soon as t Order of Redemption is used and declared, th is no Need of a new Sasine to the Redeemer, b it is sufficient that the Wadset-Haver subscrib Renunciation, and grant the Lands lawfully r deemed: And the Reason wherefore there is Necessity of a new Sasine is, because the Giver the Wadset was never disseased, he remaining f Vassal to his own Superior; but gave allenarly base Sasine to be holden of himself, which by t Renunciation accresceth to the Sasine which he h stranding in his Person, holden of his own Superi and is in Effect a Consolidation of the Prope which was wadset with the Superiority, which r mained in his Person unwadset and undisponed.

Of the Nature of Reversions.

171. ALL Reversions are *stricti juris*, & *transeunt in hæredes vel assignatos*, *eorum expressa fiat mentio in corpore reversion* and yet if the Right of a Reversion be compris it will pertain to the Compriser, albeit the Reve sion was only made to Heirs, and not to Assigni as was practised betwixt the Earl of *Errol* and *Bu kie*, whereof the apparent Reason is, That t Comprising is not a voluntary Assignation, but n cessary and judicial. But if the Reversion bear be made to the Receiver and his Heirs, excludi all others his Assignies, the Matter will be mo di

ſputeable; and in my Judgment it ſhould in that ſe alſo exclude a Compriſer.

172. *Item*, If the Order of Redemption be uſed the Party to whom the Reverſion is made in his n Time, the Right thereof is tranſmiſſable to Aſſigney, albeit the Reverſion was not made to Aſſignies, nor did exclude Aſſignies.

173. *Item*, Where the Party having Right to Reverſion makes Aſſignation thereof to divers rſons; the laſt Aſſignation, with the firſt Intiation thereof, is preferred to the firſt Aſſignation t intimated.

174. But where a Reverſion is compriſed, there eds no Intimation, but the firſt Compriſer is prered to the ſecond Compriſer, albeit he intimate ſt.

175. *Item*, Where the Right of Reverſion is ſponed, not by way of Aſſignation, but by Intment proceeding upon Reſignation; in that ſe there is no Neceſſity of Intimation, but the rty infeft upon Reſignation will be preferred to a ond Aſſignation firſt intimated, & *ratio eſt*; hat the Right of Reverſion paſſeth by Infeftment on Reſignation, or by way of Compriſing, the ſignant, or Party from whom it is compriſed, is ly and totally denuded *ad non remanet apud eum is aliquod veſtigium vel color*: But where Aſnation is made, and no further, it is thought at he is not fully denuded till Intimation be de.

176. But it is to be remembred, where Lands wadſet to be holden of the Superior, under Reverſion,

verſion, that the Right of this Reverſion is on
tranſmiſſable by way of Aſſignation, and not
way of Reſignation and Infeftment, whereof t
is the Reaſon, becauſe the Lands being once r
ſigned already in Favour of the Receiver of t
Wadſet, the ſame cannot be of new reſigne
And if any Reſignation be made otherwiſe than
the Receiver of the Wadſet and his Heirs, t
ſame is null and invalid, and conſequently *qu*
actus principalis eſt invalidus, which is the R
ſignation of the Lands: Therefore alſo the Rig
of the Reverſion, which in Reſignations, *tran*
cum univerſitate, and falls *in conſequentiam*, & *ra*
rationis eſt, *quod jus Reverſionis ſit merè incorp*
reum, whereof the Right is properly and *habi*
modo tranſmitted by Aſſignation, and cannot
tranſmitted *per Saſinam niſi acceſſoriè ad rem co*
poream cui inhæret. And albeit it may be alledge
That *jus ſuperioritatis*, is *jus incorporeum uti omn*
jura ſunt, *quia omnia jura qua ſunt jura incorpore*
yet this makes not *jus ſuperioritatis* to be *jus i*
corporeum, no more than *jus proprietatis*, becau
utrumque jus & proprietatis & ſuperioritatis ſu
rei corporeæ, *id eſt*, *fundi*, *cujus dominium acqui*
non poteſt, *niſi per traditionem corpoream*, *hoc e*
Saſinam : *Sed jus Reverſionis non eſt jus rei corp*
reæ, *ſed jus incorporeum*, *in re quæ licet ſit corpore*
non tamen habet neceſſitatem traditionis ad ejus a
quiſitionem, & *jus Reverſionis*, is in Effect no
ther but a Servitude, & *ſervitus in fundo alie*
acquiri poteſt abſque traditione vel Saſina, *per ſi*
plicem diſpoſitionem, *quia in juribus hiſce incorp*
re

is non requiritur poſſeſſio, ſed quaſi poſſeſſio; and herefore the Servitudes *prædiorum ruſticorum, vel banorum, acquiruntur ſola diſpoſitione abſque Sa-a*, as the Servitudes of Multures and of Aque-ucts *in ruſticis*; *& altius non tollendi in urbanis.*

177. And where it may be opponed, That the ights of Annualrents are Servitudes, and ſicklike *uſufructus in fundo*, but yet paſſeth by Saſine: It anſwered, That the Caſe is not alike, becauſe Annualrent is *quaſi pars fundi, & uſusfructus jus fructuum fundi ad tempus, & ſic potius ſunt ra rei corporeæ, quam jura in re corporea.* And al-eit to the Right of an Annualrent *quoad conſtitu-onem ab initio*, there is a Neceſſity of Saſine, ithout which it cannot be eſtabliſhed formally, or ſeparate from the Uſe of the Lands, whereof is an Uſufruct; yet after the Uſufruct is once wfully conſtitute by a Saſine, it is thereafter anſmiſſable by Aſſignation *ſine Saſina*.

178. And the Right of Liferent which pertains the Superior, through the Vaſſal's Rebellion by e Space of Year and Day, pertains to the Supe-or by the Law; and he may diſpone the ſame to Donatar *ſine Saſina*, becauſe the Right pertains him by Diſpoſition of the Law.

Of Liferent Eſcheat.

179. *Item*, The Right of the Liferent Eſcheat, which is in the Perſon of a Donatar, falls nder ſimple Eſcheat; and albeit from the Begin-

ning it could not vaik by a ſimple Rebellion, but by a Rebellion *poſt annum & diem*; & *ratio eſt*, becauſe it is not *quoad donatorem* a Liferent Right, but only a Right to Lands, and Mails and Duties thereof, enduring the firſt Rebel's Lifetime. *Quid dicendum eſt* of Rentalers Liferent, Whether doth it fall to the Heritor, or to his Superior of whom he holds, or to the King? *Reſpondeo*, Where there is no Infeftment in the Perſon of the Rebel, the Liferent pertains to the King.

180. But it is much doubted, whether Liferent Eſcheat, which pertains to the Superior by his Vaſſal's Rebellion, being once eſtabliſhed in the Superior's Perſon, doth fall in Eſcheat by the Superior's ſimple Rebellion or not? *Ratio dubitationis* ariſeth from the Similitude of the Caſe which it hath with the Liferent Right eſtabliſhed in the Perſon of the Donatar, albeit there be a great difference; for a Liferent accreſcing to the Superior, *eſt pars ſuperioritatis*, and in Effect is become Property to the Superior during the Vaſſal's Lifetime: Whereas the Liferent in the Donatar's Perſon is *jus ſeparatum à ſuperioritate*; and in my Opinion a Liferent accreſcing to the Superior by the Vaſſal's Rebellion, cannot vaik, by ſimple Eſcheat, in the King's Hands, except the Superior be Year and Day at the Horn, and ſo doth fall under a Liferent Eſcheat.

181. *Item*, The like is in Liferent Tacks, which by Act of Parliament fall under *Liferent Eſcheat*, and not under a *ſimple*; and yet if the Liferent Tack be aſſigned in Favour of a third Perſon,

Perſon, it will fall under the Aſſigney's Eſcheat, as was decided betwixt Sir *Robert Ker* and the Heirs of the Earl of *Lothian*: And the Reaſon is, becauſe there is not a formal Liferent eſtabliſhed in the Perſon of the Aſſigney, as it was in the Perſon of the Tackſman.

182. And the like of this is in a Liferenter of Lands, whoſe Liferent cannot vaik by ſimple Eſcheat in the Superior's Hands; and yet if the Liferenter does aſſign the Liferent to a third Perſon, the Right thereof will fall under the ſimple Eſcheat of the Aſſigney, to whom the Liferent is diſponed.

183. By Act of Parliament 1592, Eſcheats diſponed in Favours of the Rebel are null; and the ſecond Donatar who purchaſeth a new Right from the King, will be preferred to the firſt, if the ſecond can prove the firſt to have been ſimulate for the Behoof of the Rebel.

184. But this Act of Parliament provides no Remedy for Eſcheats diſponed by other Superiors than the King, or by Lords of Regalities in Favours of Rebels, in reſpect it only annuls the Gift granted to the Behoof of the Rebel, and ſo gives Occaſion to a new Gift in Favours of a ſecond Donatar: But if there be not a ſecond Gift granted to a new Donatar, there is none to quarrel the firſt Gift of Nullity. And ſeeing the Lords of Regality in ſimple Eſcheats, and other Superiors in Liferent Eſcheats, are not in Uſe to make ſecond Donatars, or may not do it without Hanger of Warrandice, where they are obliged to

diſpone the Eſcheats ſo often as the ſame vaiks: Therefore 'tis doubted what Remedy may be had againſt Eſcheats diſponed to Rebels by Lords of Regalities, or other Superiors beſide the King; which Doubts are ſolved by the Anſwer made to the Queſtion immediately preceeding, *viz.* That a Liferent diſponed to a Donatar falls under the ſimple Eſcheat of a Donatar: Therefore the Liferent being diſponed to the Behoof of the Rebel, vaiks by ſimple Eſcheat in the King's Hands, which the King may diſpone upon: And this is clear in Liferents, where the Superior Diſponer thereof has no Right to ſimple Eſcheats; but where the Superior is a Lord of Regality, and therethrough alſo hath Right to the ſimple Eſcheat, the Queſtion is more difficult, *& meo judicio, eget conſtitutione Imperatoria.* The Gift of ſimple Eſcheat doth comprehend all moveable Goods and Gear pertaining to the Rebel, all Bonds and Obligations moveable, all Tacks and Aſſedations not containing a formal Liferent, together with the Cropt of the ſame Corns being upon the Ground in Time of the Rebellion, and alſo the Mails and Duties of the Lands for the Time, at or after the Rebellion.

185. *Item*, The ordinary Form of Gifts of Eſcheat which paſſeth the Privy-Seal, bears not only Goods, Gear, Moveables, Tacks, *&c.* but alſo Reverſions, albeit Reverſions be heritable Rights, and cannot fall under any Eſcheat; and there can no Solution be made to this Difficulty, but *ſtilus curiæ*, or that the Word *Reverſions* be exponed,

Of

Of Reversions of Tacks, and Bonds that fall under Escheat.

186. *Item*, A simple Escheat doth by the Interpretation of the Lords comprehend no more moveable Goods and Gear but such as pertain to the Rebel the Time of the Denunciation, or which he acquired within Year and Day after the Denunciation, or accresced to him: But if the Rebel has remained at the Horn many Years before the Date of the Gift, in that Case it comprehends the whole moveable Goods and Gear acquired by the Rebel, and pertaining to him during the whole Years of his Rebellion, and preceeding his Gift.

187. And sicklike, If the Rebel remain at the Horn for divers Years after the Gift, in this Case the Donatar has no Right thereto by his Gift, except the Gift bear *per expressum* these Words, *Together with all other Goods and Gear which shall accresce to the said Rebel during the Time of his Rebellion, ay and while he be relaxed.* And if the Gift bear not this Clause, that which accresceth by the Continuation of the Rebellion, after the Date of the first Gift, may be disponed by the King to a second Donatar, which will be preferred to the first, in so far as concerns the same.

188. *Item*, Albeit there fall nothing under simple Escheat, vaiking by Horning, but the moveable Goods, *ut supra*, yet where the Escheat vaicks by Forefeitry, Bastardy, or *tanquam ultimus hæres*, the same in all these Cases comprehends all heritable Bonds whereupon no Infeftment followed, and also comprehends Rights of Reversions

of Lands and Annualrents: But this is to be obser-ved in the different Form of the Gift, that the same in these Cases must bear the heritable Bonds and Contracts *per expressum*, and not generally; so that where two Gifts of Escheat shall happen to be disponed, as vacant by Forfeiture, Bastardy or lack Heir, the Gift, which is only generally of Move-ables, according to the Form of Gifts past upon Horning, will only be extended to Moveables sim-ply, and not comprehend heritable Bonds, Con-tracts or Reversions; and the other Donatar who has a Gift thereof *per expressum*, will be preferred to the other general Gift. But if the Gift bear *per expressum* only an heritable Contract or Bond, or only one Reversion *per expressum*; and if thereafter there be subjoined a general Clause of all Contracts and Reversions of the like Nature; in that Case, the general Clause subjoined to the particular will be as effectual as if the whole Particulars were insert *per expressum*.

189. *Item*, The Escheat of Liferent belongs to the lawful Superior, whether the King or any Sub-ject; but the Superior, beside the King, has only Right to the Liferent of these Vassals who are in-feft and hold Lands of him: But if there be no In-feftment in the Person of the Rebel, but that he bruiks Lands, Teinds, Annualrents, by way of Bond, Contract or Tack; in this Case the Life-rent pertains not to the Superior, but to the King's Majesty. But if there was once a lawful Infeft-ment taken in the Person of the Vassal, then if his Heir, or apparent Heir, remain at the Horn Year and

nd Day, his Liferent vaiks in the Hands of his mmediate Superior, albeit the apparent Heir be ot infeft.

190. *Item*, Where there concurs two Donaars, either of ſimple or Liferent Eſcheat, the ſt Gift, with the firſt Diligence, by raiſing of Declarator, citing of the Party, tabulating the ummons, calling thereof, and inſiſting in the Purit till Decreet be obtained, is preferred to the rſt Gift, with the laſt and poſterior Diligence; nd even the firſt Decreet is preferred *extra omnem uæſtionem*, albeit it proceed upon a poſterior Citation, except the Donatar who is prejudged be ble to improve the Execution of the Summons. Neither will the Donatar be heard to reduce the rſt Decreet, upon Reaſon of Anteriority of his ift and Citation: But if no Decreet be pronounced, then both the Donatars, *ante ſententiam*, will e heard to diſpute upon their Gifts and Diligence, and be preferred and poſtponed accordngly.

191. *Item*, There falls under Forfeiture, Batardy and laſt Heir, not only moveable Goods, *ut upra*, but alſo heritable Rights of Lands, Teinds, Annualrents, wherein the Perſon forfeited and Batards were infeft. But there is a Difference in the Form of the Gift thereof; for Eſcheats vacant by Horning, and alſo of heritable Bonds whereupon no Infeftment has followed, vaiking by Forfeiture, Baſtardy, *&c.* paſſeth only the Privy-Seal: But where Infeftment followed, the ſame paſſeth either by way of Signature through the whole Seals, till

it come to the Great Seal, or by way of Presentation under the Quarter Seal, otherwise called the *Testimonial of the Great Seal.* And the Reason of this Difference ariseth from the Diversity of the Gifts; for heritable Bonds, whereupon no Infestment has followed, pass *habili modo* by Assignation, to the which a Gift under the Privy-Seal is answerable; but Infestments of Lands and Annualrents cannot be transmitted *habili modo* by Assignation, but by Infestment only.

192. And as to this different Reason of the Great and Quarter Seal, That ariseth also from the Diversity of the Holding of the Infestment; for if the Lands pertaining to the forfeited Person or Bastard were holden of the King, in this Case the Right of the saids Lands must pass by Infestment through the whole Seals, *viz.* Signet, Privy Seal and Great Seal; and upon that Infestment the Donatar must receive Sasine by Precept under the Quarter Seal. But where Lands were not holden of the King, but of another Superior, in this Case the King cannot dispone the same to be holden of himself; and he cannot retain them, because he cannot be Vassal to the Superior, who is his Subject: And therefore seeing the Benefit, vacant by the Forfeiture, falls to the King, and not to the Superior, the King has Place and Power to present a Vassal to the Superior, in Place of the Vassal who was forfeited or Bastard; which Presentation passeth under the Quarter Seal, and bears a Command to the Superior to enter and receive the Person presented in Place of the other Vassal, where-

whereupon the Party presented requires the Superior under the Form an of Instrument, according to the Form of the Chancery observed in Precepts upon Retours of Lands holden of other Superiors than the King; and if the Superior obey the Command of the Presentation, there is no more to be done, but the Party presented is seased by the Superior's Charter or Precept, which has Reference to the Presentation.

193. But if the Superior refuse or delay, then the second and third Precepts are directed as upon Retours; and last a Warrant to the Sheriff to give Sasine: And I have also seen another Order observed immediately after the Use of the Presentation, by obtaining Letters of Horning by Deliverance of the Lords of Session, for charging of the Superior to give Sasine, which is also the Custom observed against Superiors for giving Infeftment upon Commissings. But in my Judgment the former Course is more certain; for by it the Party, after some Delay, obtains a real Right by Sasine from the Sheriff; but in this other, the whole Order resolves in Horning, and not in real Right.

194. *Item*, If the King be pleased to dispone the real Right of Forfeiture or Bastardy in Favour of the immediate Superior, it cannot be done directly and immediately in favour of the Superior himself, but must be done by Presentation in favour of a third Party, to his Behoof; who being infeft by the Superior, must resign in the Superior's Hands, *ad perpetuam remanentiam*.

195. *Item*,

195. *Item*, Albeit the Lords of Regality hav Right to the Eſcheats of the Inhabitants with their Regality vacant by Horning, yet where th Eſcheats vaik by Forfeiture, the Lords of Regal ty have no Right thereto, but the ſame only pe tains to the King.

196. And as to Eſcheats vacant by Baſtardy or laſt Heir, it has been controverted, and remain yet undecided, whether or not the ſame pertain t the Lords of Regality or to the King.

197. Caſualities vacant by Eſcheat, Forfeiture Horning, Baſtardy, laſt Heir, *&c.* albeit lawfull expede thro' the whole Regiſters and Seals requi ſite, yet the ſame eſtabliſheth no real Right no Title in the Perſon of the Receiver, except he ob tain Declarator thereupon, either general or ſpecial and after Declarator, *habetur pro titulo*, and no o therwiſe. But there is this Difference betwixt Eſ cheats and Gifts of temporal Caſualities, and Gifts o Forfeiture and Recognition, *viz.* That in the former a poſterior Gift with a prior Diligence will be preferred; but where Infeftments are lawfully expede upon Forfeiture under the Great Seal, and Saſine lawfully following thereupon, in this Caſe no poſterior Infeftment, albeit clade with prior Diligence, will be preferred to the firſt; and the Difference is from the Nature of the Caſualities; the firſt being a Caſuality either of Moveables, or of a temporal Right; and the other being of an heritable Right, and conſequently of the Property of Lands.

198. *Mem.*

198. *Mem.* Where Forfeiture paſſeth in Parliament, then the Donatar needeth no Declarator upon his Right; but where the Forfeiture paſſeth by Act of Adjournal in Juſtice Courts, then a Declarator is needful, and muſt be obtained.

199. *Item*, The Difference between a ſpecial and general Declarator is this, That the general Declarator is only a Decreet of the Lords, finding, *That the Goods or Lands contained in the Gift, vaik in the King's Hands, by the Manner of Vacation contained in the Gift; and that therefore the Donatar has good Right to the Goods or Lands diſponed to him in his Gift*; and doth not proceed further againſt the Intromitters with the Goods, or Detainers of the Lands; but the ſpecial is craved, not only againſt the Party to whom the Goods or Lands pertained, *& per cujus culpam* the ſame vaiked in the King's Hands; but alſo is raiſed againſt the Intromitters with his Goods for Payment thereof, or the Prices of the ſame to the Donatar; or againſt the Tenants and Occupiers of the Lands for Payment of the Mails and Duties of the ſame, for all Years and Terms the ſame vaiked in the King's Hands.

200. *Mem.* The ſpecial and general Declarator may be accumulate and compriſed in one Summons; but if it be, the Summons bides Continuation, in reſpect it bides Probation; whereas if the Summons only contain general Declarator, the ſame needs not Continuation, becauſe the ſame is verified *inſtanter*.

201. But

201. But according to the old Cuſtom obſe ved before the Lords, where the Summons d contain both general and ſpecial Declarator, t Purſuer may crave Decreet upon the genera which will be granted to him by the Lords, if t Defender have no relevant Exception to ſtay t ſame; and alſo on the ſame Summons may cra a Day to prove the ſpecial Declarator, which al will be granted; and ſo upon one Summons the is both granted a Decreet for the general, an *Litis-conteſtation* made in the ſpecial.

Of Signatures and Seals.

202. A Signature is properly a Letter of Gif Donation or Diſpoſition, which paſſet under the King's Hand in favour of any Subject which, according to the ſeveral Natures thereo paſſeth either under the Signet allenarly, or unde the Privy Seal allenarly, or under the Quarte Seal allenarly, which is the Teſtimonial of th Great Seal, or paſſeth under all theſe Seals, excep the Quarter-Seal.

203. There are two Kinds of Signets, one o the Secret Council, another of the Seſſion; an the Keeper of both is the King's Secretary and hi Deputes.

204. Under the Signet of the Secret Counci paſs all Commiſſions or Licences granted by the Secret Council, with all Letters, either for Citati-

on

or Horning in Cauſes belonging to the Secret
uncil.

205. Under the Signet of the Seſſion paſs all
tters and Summonſes before the Seſſion, and cri-
nal Letters before the Juſtices; and ſicklike,
Signatures which are appointed to paſs thro'
haill Seals, muſt firſt paſs through the Signet of
e Seſſion.

206. *Item*, All Gifts of Caſualities, ſuch as of
cheats, Wards, Nonentries, Baſtardies, Let-
rs of Penſion, Proviſions and Preſentations to
irks and Benefices, not being Prelacies, paſs un-
r the Privy Seal immediately, and go no further
any other Seal.

207. *Item*, All Signatures of Prelacies, and
eat Benefices; and alſo all Signatures of the Of-
ers of State, paſs under the Great Seal only,
thout any other Seal; and ſicklike, all Signa-
res, which paſs only the Signet and Privy-Seal,
ſs alſo the Great Seal.

208. *Item*, The Letters which paſs under the
uarter Seal, are either Precepts of Saſine upon
feſtments paſt under the Great Seal, or Letters
Preſentation of heritable Tenants and Vaſſals, to
periors of forfeited Lands, or Lands vaiking by
aſtardy, and alſo by Act of Parliament 1587,
ommiſſions of Juſticiary are ordained to paſs the
uarter Seal; and ſicklike, all Commiſſions for
earing of the Treaſurer's Accompts, paſs the
uarter Seal.

209. *Item*, Of old, in further Corroboration of
e Decreets of the Lords of Seſſion, the ſame
were

were ratified by His Majeſty under the Quart Seal.

210. All Signatures, when the King was in *Scotland*, paſt the Kings own Hand, and were ſubſcribed at the Foot thereof; but ſince his going to *England*, the ſame are all ſubſcribed and ſignet by the King, either with his own Hand, or by a Caſhet, which has the King's Name, and whose Letters thereof, as he uſeth to write the ſame, engraven therein: Which Caſhet is kept by the Chancellour; and all Signatures muſt paſs his Majeſtie's own Hand, which are excepted out of the Commiſſion granted by His Majeſty to the Lords of Exchequer, or which are not contained within the ſaid Commiſſion, ſuch as Remiſſions for Treaſons, Slaughter, Witchcrafts, and others of the like Nature, being of great Importance.

211. *Item*, All Signatures which may be paſſed by Virtue of the Commiſſion of the Exchequer here beneath, paſs the Caſhet.

212. *Item*, The Form of paſſing Signatures, whether the ſame be ſigned by His Majeſty, or caſhetted, is this, *Firſt*, The ſame are formed by a Writer to the Signet, and marked by his Name on the Back. 2*do*, They are delivered by the Party, to the Preſenter of the Signatures, who is Mr. *Patrick Brown* for the preſent, and he makes a Roll thereof, and affixeth the ſame upon the Exchequer Wall every Week, about *Wedneſday*, which is Four Days before the ſame be preſented to the Exchequer, which is uſually upon *Saturday* thereafter. 3*tio*, The Treaſurer, before the ſame be

preſented, conſiders the Signatures with the rits neceſſary for Verification thereof, and hears rties make Offers anent the Compoſition to be d for the ſame. 4*to*, The ſame are paſt and mponed by the Lords of the Exchequer, where- the Quorum is now, by Virtue of the laſt Com- ſſion of Exchequer, any Four of the Number, h the Treaſurer or Treaſurer-depute; and the mpoſition is written at the End of the Signature, the Preſenter; which Compoſitions are made s or more, at the Lords Pleaſure. 5*to*, The natures being paſt by the Lords of Exchequer, ſame are retained by the Preſenter, till the rty pay the Compoſition, which is paid to one the Receivers, who teſtifies his Receipt thereof, his Subſcription on the Back of the Signature. , The Signatures are caſhetted by the Chancel- or his Deputs. 7*mo*, The Signatures muſt reafter be regiſtrate in the Regiſter of the reaſury, Comptrollary, Collectory and Treaſury new Augmentations, or one or other of the ds Regiſters, or all of them, according to the ature of that which is diſponed in the Signature; albeit all theſe Offices be jointly in the Perſon the Treaſurer, yet becauſe their Inſtitution from Beginning was ſeveral, and had their ſeveral giſters, which were and are the Charge of each ficer: Therefore the ſaids Regiſters remain yet confounded; likeas the yearly Compts are yet verally made, *viz.* At the Treaſury, which com- ehends the whole Caſualities, which fall to the ing yearly; and of the Comptrollary, which com-

pre-

prehends the Rents of His Majesty's Property, Customs, Imposts, Burrow-mails; and, lastly, Of the Collectory and Treasury of new Augmentations, whereof the Collectory being instituted in *Anno* 1561, comprehends the Superplus of the Thirds of Benefices, and the Treasury of new Augmentations, being instituted at the making of the Act of Annexation, *anno* 1587, comprehends the Feu-Mails of Kirk-Lands, and blanch Duties of Erections.

213. *Item*, After the Signatures are past the Register, the same are retoured by the Party to a Writer to the Signet, who wrote the same, and who, conform to the Warrant contained in the End of the Signature, which bears, *And that Precepts be direct hereupon in Form as effeirs*, draws up a Precept in Latin, directed to the Lord Privy Seal, making Mention of the Signature, and commanding him to expede the same under the Privy Seal: Which Precept bears in the End thereof these Words, *Datum under Our Signet the Day of* And under that is written, *Per Signaturam manuum vel Cashettæ, &c. D. N. Regis supra signat. & dominorum Scaccarii, subscript. vel supra signat. & subscript.* And this Precept is signed by a Writer to the Signet, and sealed with the Signet kept by the Secretary and his Deput; who, for their Warrant, retain the Signature in their Hands, and deliver the Precept under the Signet to the Party who carries the same to the Writer to the Privy Seal; who thereupon draws up a new Precept in Latin, direct to the Lord

ord Chancellor, Keeper of the Great Seal, for peding of the ſaid Signature under the Great al; and the Precept bears at the End thereof, *tum ſub ſecreto noſtro Sigillo, apud, &c.* and has derneath, *per præceptum datum ſub ſigneto, &c.* nd the Precept is commonly written on Parch-ent; whereas the firſt was only on Paper, and bſcribed by the Writer to the Privy Seal; and s the Privy Seal appended thereto, by a Tagg, white Wax only. After 'tis ſealed, 'tis returned the Writer to the Privy Seal, to the Effect it ay be regiſtrate in his Books, who writes on e Back thereof, *Written to the Privy Seal, and giſtrate ſuch a Day.* And alſo the Keeper of the rivy Seal, when he appends the Privy Seal there-, retains the Precept under the Signet for his arrant, and writes on the Back thereof, *Sealed ch a Day*; thereafter delivers the ſaid Precept to e Party, who takes it to the Director of the hancery, who writes out a Charter in Latin, af-r the ordinary Form of Charters, agreeable to the enor and Subſtance of the Signature and Pre-pts; and this has in the End, *Datum ſub magno gillo*, but bears nothing under it, but allenarly s the Great Seal appended by the Chancellor, ho, or his Deputes, writes on the Back thereof, *aled ſuch a Day*; and after that 'tis returned to e Director, who regiſtates the ſame in the Re-ſter of the Great Seal, and writes on the Back, *egiſtrate, tali die*; and the Chancellor, at the pending of the Great Seal, retains the Privy Seal r his Warrant.

214. *Item*, If the Signature or Infeftmen be in Favours of the Chancellor himſelf, the Cha ter bears, not only that the Great Seal is appende but alſo that the Privy Seal is adjoined thereto and, *de facto*, they are both appended.

Of Saſine, and the Precepts.

215. *ITEM*, Some Letters and Charters, whic paſs the Great Seal, require no mor to be done for Perfection of the Right containe therein, as a Charter of Confirmation, a Letter o Remiſſion for a Crime, and Legitimation, *&c.* B others require a further Deed to be done for Perfe ction of the Right, *viz.* That Precept of Saſine, an Saſine follow thereupon, as is in all Charters o Lands and Annualrents, either ſimple, upon Reſig nation, or containing Gifts *de novo damus*, whic may be ſubjoined either to Confirmation or Re ſignation. In theſe Caſes, after the Charter ha paſt the Great Seal, the Director of the Chancer gives forth a Precept under the Quarter-Seal, fo ſeaſing of the Party in the Lands or Annualrent diſponed to him: And this Precept is directed with a Blank for inſerting of the Baillies Name, wh is to give the Saſine; but ſo that it ever deſign him to be Sheriff of the Shire where the Lands l (*Balivis in hac parte*) which in Effect is a Con ſtitution of ſuch Perſons to be Sheriffs and Baillies to the giving of the Saſine, whom the Partie pleaſe to chuſe and inſert in the Blank; and upo thi

his Precept delivered to the Party, Saſine is taken, ither upon the Ground of the Lands, or any one of hem, for the Whole, if they ly contigue, or upon very one of the Lands, if they ly diſcontigue, except there be an Union contained in the Charter, with Power to take Saſine on any of the Lands for the whole, notwithſtanding of the Diſcontiguity; in the which Caſe, Saſine taken at the Place appointed in the Union, is ſufficient for the Whole.

216. *Mem.* This Precept of Saſine which paſſeth the Quarter-Seal, *ut ſupra*, in this differs from the Precept of Saſine following upon Retours: *Firſt*, That theſe do not paſs the Quarter-Seal, but are direct forth of the Chancery, cloſed within the Seal like to that, that cloſeth the Brieves. And ſicklike, the ſame contains no Blank, but is directed in the Body to the Sheriff of the Shire where the Lands ly; and none but the Sheriff or his Deput can give Saſine thereupon; nor can any be Notar to the Saſine but the Sheriff-Clerk or his Deputes; and if the ſame be done otherwiſe, the Saſine is null by divers Acts of Parliament, in *Anno* 1555 and 1557; and the Reaſon of the Difference is this, becauſe the Sheriff muſt be anſwerable to the King for the Reſpondee contained in the Retours; whereas the Sheriff in other Precepts upon Infeftments paſſing by Signature, is not to be charged for any Thing due to the King.

217. Saſines muſt be taken not only upon the Ground of the Lands by Delivery of Earth and

Stone; but alſo of the Mill *per expreſſum*, by de-livery of the Clapper; and of Salmond Fiſhing, by Delivery of a Net, *Quia hæc ſunt inter Regalia & requirunt ſeparatam ſaſinam; nam ea quæ ſunt Regalia*, require an expreſs Diſpoſition, as a Tower, a Mannor-Place, Mill, Salmond-fiſhing, a Port or Haven, a Burgh of Barony, a Right of Patro-nage, Juriſdiction of Court, Blood; and none of theſe can be diſponed *ſub nomine pertinentiarum* of Lands; albeit they all inhere in the Lands diſ-poned, or adhere thereto, *vel tanquam ſuperficies in ſolo, vel tanquam diſtrictus juriſdictio in ter-ritorio.* But yet albeit all theſe require a ſeveral Diſpoſition, and expreſs; yet do not all require a ſeveral Saſine, nor a divers Form thereof, but only the Mill and Salmond-fiſhing. And as to the reſt, if they be *per expreſſum* diſponed in the Charter, the Saſine being taken upon the Ground of the Lands ſimply, is ſufficient for the ſame.

218. *Item*, Where a Barony is diſponed *cum annexis, connexis & pertinentibus ejuſdem*, it com-prehends all Towers, Mannor-places, Mills, & *omnia Regalia*, without any Neceſſity of expreſſing the ſame, *Quia Baronia eſt nomen juriſdictionis & univerſitatis*; and therefore Saſine being taken upon any Part of the Barony, will comprehend the Tower, the Mill, and other *Regalia*, albeit they be not particularly expreſt neither in Charter nor Saſine.

Of the inferior Jurisdictions.

219. THE Jurisdiction of a Baron or Barony, properly only comprehends Courts of Blood, and Bloodwit, and a Thief with the Fang, with Pit and Gallows effeiring thereto; and also the Courts and Pleas in Civil Matters betwixt Party and Party, wherein the Baron has Power by Acts of Parliament; and also the taking Order with Meat and Drink, and the Prices thereof, Metts and Measures, taking of Bearers of Hagbuts, *&c.*

220. *Item*, The Sheriff in Criminals may preen the Baron by the first Citation, both in simple Blood, and in Theft; and also has Power to sit upon a Thief by Way of Citation, which the Baron has not.

221. *Item*, The Sheriff has no Power in Slaughter, but where the Committer is taken with red hand; and he must do Justice within three Suns; and, if he do it not, he must either present the Committer to the Justice, or have a Commission from the Council to do Justice upon him.

222. But the Lord or Baillie of Regality has great Power and Jurisdiction, as the Justice General, within the Bounds of his own Regality, and may proceed upon Theft, Slaughter or any other Crime upon Citation.

223. *Item*, The Privilege of a Lord of Regality is, That not only he has supreme Jurisdiction, *quasi merum imperium* upon all the Inhabitants

within the Territory of his Regality, together with the Escheat of all Persons convicted for whatsoever Crime except Treason, the Escheat whereof doth belong only to the King: And also hath Right to Escheats vacant by Horning and Rebellion; and claims also Bastardy and last Heir, which is not fully decided as yet.

224. *Item*, The Lord of Regality or his Baillie, has the Power or Liberty of Weaponshawings within the Bounds of the Regality: And sicklike has the Power of Civil Jurisdiction in Civil Causes, in all Actions which are pursued before the Lords, except Reductions, Improbations, Redemptions and Suspensions.

225. *Item*, The Lords of Regality have the Privilege and Liberty of Chapels and Chancery, by directing of Brieves, and serving of the same before themselves; and the Retour and Extract of the Service before the Baillies of Regality, maketh as great Faith, as a Retour forth of the Chancery.

226. But it is to be observed, That in Regalities, the Service and Retour is all one, in Respect the Clerk of the Regality both directs the Brieves, and is Clerk to the Service; so that the Retour is nothing else but the Extract of the Service, registrate in his Book; whereas in the King's Chancery they are divers, the Service being under the Subscription of the Sheriff-clerk, and registrate in his Books; and the Retour thereof being the same Service, retoured to the Director, and registrate in his Books.

227. *Item*,

227. *Item*, The Stewartries in *Scotland*, are Offices erected in the King's proper Lands, as the same fell to the Crown, or were annexed thereto; and these Stewartries are not only erected with the Power of the Sheriffs, but also have the Power of Regalities: But seeing the Stewartries are immediately subject to the King, and not to any Subject; therefore the Brieves of Lands within the Stewartry are raised from the King's Chancery, and retoured thereto.

228. *Item*, Of the Burrows of *Scotland*, some are Royal, some Burrows of Regality, and some Burghs of Barony.

229. In Burrows of Regality, the Lords of Regality have the full Power of creating Baillies, except they have given Power by their Infeftment to the contrary, to chuse their own Baillies: Which Privilege, St. *Andrews*, the *Canongate*, *Musselburgh*, &c. have by Infeftments from the Bishop of St. *Andrews*, Abbots of *Holy-rood-house*, and *Dumfermling respectivè*.

130. *Item*, In Burghs of Barony, the Barons have full Power to chuse their Baillie.

231. *Item*, As to Burrows Royal, they are holden immediately of the King; and by their first Erections have Power to chuse their Provost and Baillies, and some of them are heritable Sheriffs within themselves, as *Edinburgh*, *Stirling*, *Haddington*, &c. and all the Burrows Royal have Power to give Sasine to their Burgage-Lands, either upon Resignation in the Baillies Hands, or upon Retour, or immediately by Hesp and Staple; for albeit all

Tenants within Burgh hold of the King as Superior, yet the universal Custom has established this Right in Favour of the Burrows, that they may receive, and enter Vassals in Name of the King's Majesty, who is Superior; but the Casualities of Superiority belong only to the King, such as Liferent Escheat by Horning, &c.

232. *Item*, it is to be remembred; Of Burrow-Lands, holden of the King in free Burgage, there is no Nonentry; and whensoever the apparent Heir is seased, his Sasine is drawn back to the Day of his Predecessor's Decease; whereof there is no Reason, but Custom.

233. *Item*, Burrows of Regality have not the Power of free Burrows, neither anent Trade and Merchandise, nor yet anent the Liberty of Convention of Burrows: But divers Burrows of Regality have been erected in free Burrows, with Liberty of Burrows Royal; and this is ever but Prejudice of the Lord of Regality, who remains still Superior of the Burrow, and whole Tenants within the same, as in St. *Andrews*, *Glasgow*, *Dumfermling*, *Kinghorn*, &c. and the like also is in the Burrows of Barony, as *Dysert*, &c.

234. *Item*, All Burrows Royal are holden immediately of the King, either fully and *in solidum*, or *in quantum* concerns the Privilege of a Burrow Royal; and the Manner of their Holding is *in libero burgagio*, for Payment of a certain Burrow-Mail to the King, whereof Compt and Payment is made yearly to the Exchequer; and no Burrows have Voice in Parliament, but Burrows Royal.

235. *Item*,

235. *Item*, Every Royal Burrow hath its own common Good, or common Lands pertaining thereto, which pertain to the Burgh in common, and are holden of the King in free Burgage *quoad* the whole Body of the Town. But if any particular Person acquire heritable Right of these common Lands from the Town, they are not holden of the King in free Burgage, but of the Town in Feu; which difference is necessary to be observed, by reason that Sasines of Lands holden Burgage, have sundry Privileges, by Acts of Parliament, which do not pertain to the Feu-Lands of the Town; as is the Registration of Sasines and Reversions within Sixty Days.

236. *Item*, Burrows Royal have this Privilege, that they may cognosce and serve Heir to Tenements of Lands within Burgh *brevi manu*, without Service or Retour, and enter them thereto, and give them Sasine by Hesp and Staple; which gives the Heirs so seased, Right to the Tenements, but doth not verify them to be Heirs *activè*, except they were served and retoured, and is equivalent to *Clare constat*, which proves Heir *passivè*, but not *activè*.

237. *Item*, Sasines given by Hesp and Staple, are sufficient Rights of the Law, and maintain the Receiver thereof in the Right of the Tenement not only *in judicio possessorio*, but also *in judicio petitorio*.

238. And of old the Sasines within Burgh, clade with Possession 40 or 50 Years, were counted irreduceable; and now the same have the like Effect by Act of Prescription.

Of

Of Judgments poſſeſſory and petitory.

239. *Poſſeſſorium judicium* is properly this, where a Party is purſued to remove from Lands, and defends himſelf by an heritable Right made to him or his Predeceſſors, clade with 10 Years Poſſeſſion, which will maintain him in a Removing; notwithſtanding that the Purſuer be able to reply and prove, That he was infeft in the Lands before the Defender. Which Reply will be repelled *hoc loco, id eſt, in hoc judicio poſſeſſorio*, and the Purſuer remitted to his Action of Reduction, which is *judicium petitorium*: And that of Removing is called *judicium poſſeſſorium ratione retinendæ poſſeſſionis*.

240. *Item*, Where any Perſon dies in Poſſeſſion of Lands, the Purſuit moved by the Heir for Delivery of the Tower, Fortalice and Mannor-place of the Lands, is called *judicium poſſeſſorium*; as was the Diſpute anent the Mannor-place of *Halyards*, betwixt the Earl of *Mar* and Lord *Torphichen*: And this may be called *judicium acquirendæ poſſeſſionis*.

241. And there is a *Third*, which is *recuperandæ poſſeſſionis*, as in Ejections, Intruſions and Spulzies; in which this Axiom hath Place in Favour of the Judgment poſſeſſory, *quòd ſpoliatus ante omnia eſt reſtituendus*.

242. The

242. The Difference betwixt Ejection and Intruſion is this, That Intruſion is *in vacuam poſſeſſionem abſque jure*, and Ejection is a violent outputting of a Poſſeſſor.

243. *Item*, Where the violent Poſſeſſor leaves the Lands; if any Perſon enter therein, he may be purſued for ſucceeding in the Vice, and for Payment of the violent Profits ſo long as he occupies, and for Removing from the Lands without a Warning.

244. Where the Heritor of Lands is troubled and moleſted for the Meiths and Marches of his proper Lands, in this Caſe the Remeid is by a Judgment called *Cognition* or *Moleſtation*, wherein the Probation is not by Witneſſes, but by an Inqueſt of 15 Perſons: And by Act of Parliament 1587, and ratified 1592, theſe Moleſtations are ordained to be purſued before the Sheriff of each Sheriffdom; and the Lords of Seſſion are excluded from all Judgment therein, except in Cauſes of Moleſtation of Meiths and Marches purſued before the Lords of Seſſion themſelves, which, as yet, may be purſued before the Seſſion, and proven by Witneſſes.

245. *Item*, By the ſaid Act of Parliament it is ordained, *That where either of the Parties fear the Sheriff to be ſuſpect and partial, in that Caſe the Lords of Seſſion, upon Citation of the Party having Intereſt, ſhall grant Commiſſion to two or three Advocates, making them Sheriffs in that Part, to cognoſce and decide upon the Moleſtation: And it is declared, if either of the Parties be alike diligent,*

Litiſ-

Litiſconteſtation ſhall be made in both the Cauſes at once, and one Term aſſigned to both Parties to prove that either of them ſhall have the half of the Inqueſt, and the odd Perſon to be choſen by Cavel and Lot.

246. *Item*, Judgments petitory are of two Sorts, either concerning the Rights of the Lands, or concerning the Meiths and Marches of the Lands; and for the Rights of the Lands, the Judgment petitory is either by way of Reduction or Improbation, or by way of Declarator: And Reduction is properly in the Concourſe of two Infeftments alike ſovereign, as alſo of two Infeftments, the one baſe, the other publick, proceeding *ab eodem authore*; where the Party being infeft, craves another Party's Infeftment to be reduced or improven: And the Declarator is, where there is no Infeftment to be reduced, but where Infeftments have ſome Competibility, and may ſtand in Part, *at non in toto*, as when the Vaſſal purſues againſt the Superior; for in theſe Caſes there is no Infeftment called to be reduced, but the Concluſion of the Summons is to hear and ſee the Right and Property of the Lands to pertain to the Purſuer.

247. *Item*, All Declarators of Recognition, Expiring of Reverſions, Reductions upon Clauſes irritant, Actions of Purpriſions againſt the Vaſſal, for uſurping upon the Superior's Property, are all of the Nature of Judgment petitory, by way of Declarator.

248. *Item*,

248. *Item*, The Judgment petitory anent Meiths nd Marches, is called the *Brieve of Perambula-on*, which yet remains as a Veſtige of the old ower and Juriſdiction which pertained to the Ju-ice-General: For the Lords of Seſſion are not udges to Perambulation, but only the Juſtice-eneral or his Deputes; and the Brieve of Peram-ulation is directed forth of the Chancery to the uſtice-General and his Deputes, who after Cita-on of the Parties, diſcuſſeth *ea quæ ſunt in jure*, Defences and Anſwers, in his ordinary Seat of uſtice at *Edinburgh*. But after Litiſconteſtation, he Juſtice goes to the Ground of the Lands, and eceives the Probation by Inqueſt.

249. Albeit the Lords of Seſſion be not Judges f this Brieve of Perambulation, *in prima inſtan-ia*, yet they are Judges therein *in ſecunda*; that , to the Reduction of the Proceſs and Decreet, any Iniquity can be qualified to have been com-itted in the denouncing thereof; as was lately een in the Proceſs betwixt *Monimusk* and *Corſindae*, here a Proceſs of Perambulation was challenged efore the Lords of Seſſion, by way of Reduction, be reduced *ſuper hoc ſolo capite*, That one of he Inqueſt was wrongouſly admitted or repelled, lbeit it was offered to be proven that Ten of the nqueſt were for the Decreet.

250. *Item*, Like unto this Brieve of Perambula-ion, which is *in prædiis ruſticis*, is the Brieve of ining, which is *in prædiis urbanis*, to the which he Provoſt and Baillies of the Burgh are properly udges.

251. *Item*,

251. *Item*, As there are ſome Judgments petitory and poſſeſſory, ſo there are ſome Actions perſonal and real which depend upon the diverſe Qualities of Rights, whereof ſome are perſonal, ſome are real.

252. A Right perſonal is where only a Perſon and his Heirs are bound, and not the Ground or Lands are really tied; and according thereto, a Bond either for Payment of Sums, or Infefting in Lands and Annualrents before Infeftment follow thereupon, is called a *perſonal Right*; and an Action founded thereupon is called a *perſonal Action*.

253. A real Right is not only where a Perſon and his Heirs are bound perſonally, but alſo re *controverſa* is tied and affected really therewith.

254. *Duplex eſt jus reale, vel in re, vel ad rem & utrumque; vel in rebus mobilibus vel immobilibus. Jus in re in mobilibus, eſt ubi proprietas rei mobilis ad aliquem pertinet; & actio quæ ob hanc competit, dicitur rei vindicatio, à quocunque poſſeſſore, ſive naturali, ſive civili.*

255. *Jus ad rem in mobilibus*, was of the Law *vel per generalem, vel per ſpecialem hypothecam*, and by our Practick it is by Arreſtment; and the Action competent thereupon is to make the arreſted Goods forthcoming.

256. *Jus in re in immobilibus eſt duplex*, viz. *vel in corporeis, vel in incorporeis. In rebus corporeis*, there is no Reality but by Charter and Saſine. But *in rebus incorporeis, ut eſt in ſervitutibus*, the ſame are real without Saſine, by a ſimple Conſtitution of a Party having Right to grant the ſame;

ſuch

ſuch as, Thirlage of Lands to a Mill, *Aquæductus, altius non tollendi*, &c.

257. Item, *Jura Reverſionum ſunt realia, & ſi quid ſuperaddatur Reverſioni, quod non eſt in corpore Reverſionis, ſed in pacto ſuperaddito, illud non habetur pro reali, ſed pro perſonali*; and therefore if the Party to whom the Reverſion is granted, do oblige him apart, to alter, diſcharge or ſuſpend the Reverſion, and thereafter make a third Party Aſſigney to the Reverſion, the Aſſigney may redeem the Lands, fulfilling the Points of the Reverſion, and will not be debarred therefrom by the foreſaid Pactions, which are perſonal.

258. Item, *Jus ad rem in immobilibus* is where a Party having a perſonal Bond to pay to him in Money, or to infeft him in Lands or Annualrents, uſeth Inhibition againſt the Party obliged; in which Caſe, the Lands annailzied by him after Inhibition, are affected to the Party-Raiſer of the Inhibition, who thereupon may compriſe the Lands, and take away the Infeftment, either by way of Exception or Action: With this Difference, That where the Infeftment after Inhibition has taken Effect by Poſſeſſion for 10 or 15 Years before the Compriſing; in that Caſe, the Lords do ſuſtain the Infeftment clade with that Length of Poſſeſſion, and remit the Party-Compriſer to his Reduction: But where the Party infeft has been in Poſſeſſion but for the Space of fewer Years, commonly the Lords repel the Infeftment by way of Exception, in reſpect of the Inhibition preceeding.

259. *Item*,

259. *Item*, Albeit the Party Inhibitor may reduce all Infeftments after his Inhibition, yet the Party whom he purſues may elide the Reduction, by offering to give Satisfaction of the juſt Debt, and may give him the like by way of Exception in a Removing.

260. But if the Party purſued for Reduction of his Infeftment *ex capite inhibitionis*, omit this Offer, and ſuffer Decreet to paſs againſt him, compearing in reducing his Infeftment; in this Caſe, it is doubted if *ex poſt facto*, he may be heard to offer. But if the Decreet of Reduction bear not *ſimple* and *abſolute Reduction*, but *allenarly*, in ſo far as the Infeftment craved to be reduced may prejudge the Purſuer in his Bond and Right; in this Caſe I think the Offer ſhould ever be competent to the Party againſt whom the Decreet is given.

261. *Item*, Reductions *ex capite inhibitionis*, may either be purſued upon a Bond and Inhibition *ad hunc effectum*, to reduce the Infeftment, in ſo far as it may be an Impediment to the Compriſing: Or the Party Uſer of the Inhibition may firſt compriſe, before he reduce, and make his Compriſing, with the Infeftment following thereupon, to be his Title in his Reduction. In the firſt Caſe, I think the Benefit of the legal Reverſion, competent of the Law to the Party againſt whom the Appriſing is led, ſhould pertain to the Party whoſe Infeftment is reduced *ex capite inhibitionis*. But in the ſecond Caſe, I think the Matter to be of greater Difficulty, eſpecially the

Party

Party compearing, against whom Decreet of Reduction is given.

Of Apprisings and Adjudications.

262. COmprisings may be led either upon a personal Bond, or upon a real Right. If upon a personal Bond, the same has Force only from the Date of the Comprising or Inhibition, if any be raised upon the Bond. But if the Ground was real, in that Case the Comprising is drawn back to the Date of the real Right: As for Example, If the Lands be comprised for the Byruns of an Annualrent, wherein the Party Comprifer was infeft, the Comprising will be drawn back to the Date of the Infeftment of Annualrent, and will be preferred to whatsoever Infeftment of Property granted before the Comprising, being posterior to the Infeftment of Annualrent.

263. And upon this Ground there may arise a notable Question, *viz.* That Infeftment of Annualrent was granted to a Woman in Liferent, and to her Son in Fee: The Woman, for not Payment of the Arrears of her Annualrent due to her, comprises the Property; which Comprising runs forth unredeemed for the Space of seven Years. *Inter majores quæritur*, if the Son, who is Fiar of the Annualrent, loseth and amitteth his Fee of the Annualrent or not? *De quo cogitandum.*

264. *Item*, Lands may be either compriſed or adjudged; and Compriſing hath Place, either againſt the Party obliged, or his Heir.

265. The Compriſing againſt the Party being on Life, requires no more but the ordinary Form, which is firſt, to ſearch the moveable Goods and Gear of the Debitor, at his Dwelling-houſe, and upon the Ground of the Lands to be compriſed; and thereafter to denounce the Lands to be compriſed upon the Ground thereof, and at the Market-Croſs of the Head-Burgh of the Sheriffdom, Stewartry or Regality where the Lands lye, and by Citation of the Party perſonally, or at his Dwelling-Houſe, to compear before the Meſſenger, Judge in the Compriſing, on Fifteen Days Warning: Which Compriſing muſt be led either upon the Ground of the Lands, or within the Tolbooth of the Head-Burgh of the Sheriffdom, except the Lords grant ſpecial Warrant and Diſpenſation to it within the Tolbooth of *Edinburgh*.

266. *Item*, Where the Party-Debitor is deceaſed, there it is firſt neceſſary that the Obligation made by the Defunct be either regiſtred againſt the Heir; or if it was regiſtred before the Defunct's Death, to be transferred *contra* him.

267. And if no Perſon be entred Heir, then the apparent Heir muſt be charged to enter Heir to the Defunct upon Forty Days; with Certification, That after the Expiring of Forty Days, ſuch Proceſs will be granted againſt him, as if he were entred; and thereafter Decreet muſt be recovered againſt him, as lawfully charged to enter Heir.

268. *Item*,

268. *Item*, After this Decreet, there muſt be new Letters charging the apparent Heir to enter ſpecially to ſuch Lands and Heritage wherein the Defunct died veſt and ſeaſed, and that within the Space of Forty Days after the Charge; with Certification, That Appriſing ſhall proceed againſt him, ſicklike as if he were infeft.

269. And after the Expiring of the Forty Days uſed upon the ſecond Letters, the Lands may be denounced to be compriſed in the ſame manner as the ſame is led againſt the Party-Debitor being on Life.

270. But it is to be remembred, that if the Party charged to enter Heir by the firſt Charge, compear, and offer to renounce to be Heir; that then in that Caſe, upon his Renunciation, he will be aſſoilzied from the perſonal Action, reſerving to the Purſuer real Action, *contra hæreditatem jacentem*: Whereupon the Party is to come to his Payment by Adjudication, and not by Compriſing; of the which Adjudication the Form will be deſcribed hereafter.

Of Compriſings.

271. *Item*, When Lands are to be compriſed, the Party compears at the Day, by himſelf or his Procurator, and produces his Claim; craving ſuch Lands to be compriſed to him for his Money: And if no Perſon compear to oppone, the Judge puts the Matter to the Knowledge of an

Inqueſt of 15 or 13 Perſons, who (being ſworn) conſider the Claim and Verifications thereof; and accordingly give forth their Verdict, and ordains the Party to be infeft in the Lands compriſed, to be holden of the lawful Superior; reſerving Liberty to the Party againſt whom the Compriſing is led, to redeem within Seven Years.

272. After the Compriſing is led, and an Extract thereof given by the Clerk of the Compriſing, under his Subſcription, and the Subſcription of the Judge or Meſſenger of the ſaid Compriſing, with the Seals of the moſt part of the Inqueſt; the ſame is in uſe to be preſented to the Lords of the Seſſion and to the Clerk of the Bills, to be conſidered, ratified and approven of by them. But the Lords Allowance is not abſolutely neceſſary to the Validity of the Compriſing, but allenarly in ſuch Caſes where Infeftment is to follow upon the Compriſing, and where the Superior of the Lands being another than the King, is unwilling to give Infeftment conform to the Compriſing: For if nothing be compriſed but *jus incorporeum*, ſuch as, Heritable Bonds, Liferent Rights, Tacks, Reverſions; in thir Caſes, becauſe the Compriſing is *jus abſolutum & perfectum*, and nothing to follow thereupon *quoad perfectionem juris*, therefore the Lords Allowance is not neceſſary. Neither, tho' it were, could it add any thing to the Validity of the Right, becauſe the Lords Allowance is *abſque citatione partis*.

273. Where the Compriſing is of Lands which are *res corporeæ*, whereof Saſine and real Tradi-

tion

tion is requiſite of the Law and Cuſtom of the Kingdom; in this Caſe, if the Lands be holden of the King, there is no Allowance, or Neceſſity of the Lords Allowance; but the Party may immediately after the Compriſing, draw up his Signature, and crave the ſame to be paſt in Exchequer.

274. And ſicklike, if the Lands be holden of another Superior than the King, the Party may paſs Infeftment upon the Compriſing, without the Lords Allowance thereof, if the Superior be willing to infeft: But if the Superior be unwilling, in the Concourſe of more Compriſings wherein Diligence is required; in this Caſe, the Lords Allowance is neceſſary; by the which the Lords *find the Compriſing orderly proceeded, and ordain Letters to be direct to charge the Superior to give Infeftment.* And the Party who uſes the firſt Charge hath the Advantage of the Law.

275. Where the Property of the Lands is compriſed at the Inſtance of more Perſons, the Party who obtained firſt Infeftment and Saſine, is preferred *quoad proprietatem*, except when the other Compriſer alledges and verifies lawful Diligence done by him to obtain Infeftment upon his Compriſing: Which Diligence, in Lands holden of the King, is where the Party having preſented his Signature to be paſt in the Exchequer, and is refuſed or delayed, takes Inſtruments, upon the preſenting thereof: And if the Lands be holden of another Superior, it is done by the charging of the Superior to give Infeftment upon the Compriſing;

And where other Infeftments are granted after this Diligence, the ſame are underſtood to be paſt fraudulently, and that the ſame cannot prejudge the lawful Diligence foreſaid.

276. *Item*, The legal Reverſion of the firſt lawful Compriſing, perfected by Infeftment or Diligence in manner foreſaid, pertains to the Debitor, againſt whom the Compriſing is led; and it is queſtioned whether this legal Reverſion will pertain to a ſecond Compriſer, who denounced before the Date of the firſt Compriſing, or not; becauſe in the Time of his Denunciation, the legal Reverſion was not exiſting. And the Lords herein have given Sentence *pro & contra*, ſometimes preferring the third Compriſer who denounced after the firſt, and found him to have Right to the legal Reverſion, excluding a ſecond Compriſer who had denounced before the Date of the firſt Compriſing. And in my Judgment this laſt is not ſo agreeable to Equity, as this where they have *found the ſecond Compriſer to have Right to the legal Reverſion, albeit he denounced before the exiſting thereof*; that is to ſay, before the Date of the firſt Compriſing.

277. Where once the Property is lawfully compriſed, and Infeftment paſt thereupon, the ſecond Compriſer, who compriſes the legal Reverſion, has no Neceſſity to paſs Infeftments thereupon, becauſe the compriſing of a legal Reverſion is of the Nature of an Aſſignation to a Reverſion, to the ſubſtantial Solemnity whereof, there is Neceſſity of a Saſine or Infeftment following: But yet there is this Difference betwixt them, that an Aſſignation

tion muſt be intimate, and otherwiſe is poſtponed to a ſecond and poſterior Aſſignation being firſt intimate; whereas an Compriſing of a Reverſion, either legal or conventional, needs no Intimation.

278. Where the apparent Heir of the Defunct renounces to be Heir, in that Caſe no Compriſing can be led againſt him, but the Party in whoſe Favours he hath renounced, muſt come to the Lands by Adjudication, whereof this is the Form: *Firſt*, He muſt have a Decreet againſt the apparent Heir *ad hunc effectum*; that he may have Execution *contra hæreditatem jacentem*. *Secondly*, He muſt raiſe Summons againſt the Superior and apparent Heir for his Intereſt, making mention of his Decreet *contra hæreditatem jacentem*, and that the Defunct his Debitor was infeft in ſuch Lands holden of the Superior; and that therefore the Right of the ſaids Lands ought to be adjudged to him, and that the Superior ought to be decerned to infeft him therein.

279. After which the Creditor will compel the Superior to give him a Charter containing Precepts of Saſine whereupon he may be ſeaſed, and thereby attains to the heritable Right of the Lands; and if the Superior be not infeft himſelf in the Superiority, in that Caſe the Superior muſt be charged to enter to the Superiority within Forty Days, conform to the Order before expreſſed, in the Form introduced in Favours of Vaſſals, by Act of Parliament K. *James* III.

280. Where the Creditor is infeft conform to the Adjudication, the Lands may be redeemed

from him by a ſecond Creditor who obtains the like Adjudication, by Payment to the firſt Creditor of the Sums of Money owing to him, with the Annual-rents thereof.

281. It may be asked, What is due to the Superior who is compelled to enter the Creditor upon Adjudication? And albeit that the Lords have found no Compoſition due upon Adjudication, and there be no Law nor Practick to determine the ſame, yet, in my Judgment, it muſt be ruled according to Compriſings, *quia eſt eadem ratio & paritas terminorum.*

282. If the Creditor in whoſe Favours the Adjudication is granted, deceaſe before he be infeft; in this Caſe, his Heir muſt crave the Decreet obtained by the Defunct againſt the apparent Heir, together with the Decreet of Adjudication obtained againſt the Superior and the apparent Heir, to be transferred to him: And if there be no Decreet of Adjudication pronounced, but only a Summons thereof depending at the Defunct's Inſtance; in that Caſe, the Heir muſt crave transferring of the firſt Decreet *ut ſupra*, and of the Summons of Adjudication in him, as Heir to the Defunct *activè*, to the Effect he may have Proceſs againſt the Superior and apparent Heir, if they be on Life; and if they be deceaſed, the transferring muſt be *paſſivè*, in the Heirs repreſenting them.

283. If there was no Decreet obtained againſt the Defunct's Debts, but only a Bond unregiſtred, with a Charge to enter Heir; in that Caſe, the Heir of the Defunct's Creditor is not to ſeek transfer-

ferring, which properly is of Decreets and Summonſes; but he is to ſeek Regiſtration of the Bond, if it bear a Clauſe of Regiſtration; or, if it bear none, he is to purſue the Heir of the Debitor *via ordinaria*, by a libelled Summons upon 21 Days Warning, or privileged by the Lords on Six Days Warning, but Diet or Table, if the Debt be proven *inſtanter* by Production of the Writ.

284. If the Heir of the Debitor, againſt whom the Charge was uſed to enter Heir, be deceaſed, in that Caſe all the Diligence uſed upon the Charge to enter Heir dies with the Party who was charged, and the Creditor will be forced *de novo* to charge the next apparent Heir, to enter Heir, not to him who was charged firſt and deceaſed, but to the Defunct who was Debitor, and thereafter to obtain Decreet againſt him; and, in caſe of his Renunciation to enter Heir to the Defunct, to crave Adjudication, *ut ſupra*.

285. If two Creditors obtain Decreets of Adjudication againſt the Superior, for infefting them in the Lands, the Superior may raiſe a Suſpenſion of double Poinding, making Mention, *That he is charged and diſtreſſed with two ſeveral Creditors, for one and the ſelf ſame Thing; and he cannot be obliged to infeft them both, but one of them; and therefore to deſire that they may be both ſummoned to compear before the Lords, bringing with them the Rights, and to hear and ſee which of them has beſt Right; and the Party having no Right, to be diſcharged of all further troubling and moleſting the Superior in Time coming.*

Of

Of Reductions and Improbations.

286. WHere Summonſes of Improbation are ſimply raiſed, without Reduction, then in Effect the Concluſion of the Summons, and the Reaſons of the ſame are coincident, and one Thing, to wit, To hear and ſee the Writs called for, to be decerned to be improven and null, as falſe and feigned, and to make no Faith; which is the Concluſion, becauſe the ſame are falſe; and the Purſuer, with Concourſe of the King's Advocate, offers him to prove the ſame, *per teſtes inſertos, & omni alio modo quo de jure*: And therefore, in reſpect of the Conincidence, the Form of the Summons of Improbation, varies from the Form of the Summons of Reduction; for the Summonſes of Reduction are conceived in a peremptor Form, bearing firſt Production, then Reaſons of Reduction: But the Summons of Improbation begins not at Production, but keeps the ordinary Stile of a common Summons, and then concludes Production of the Writ to be improven.

287. *Item*, Where the Summonſes of Reduction and Improbation are joined in one Summons, which is very ordinary; in that Caſe, the Summons bears the Stile of Reduction, and bears firſt Production of the Writs, and then the Reaſons.

288. *Item*, When the Summons comes to be diſputed, the Purſuer may divide his Reduction from his

his Improbation, and may force the Party to answer to the Reasons of Reduction, he granting the Production to be satisfied, in so far as concerns the Reduction, notwithstanding that the Production, in so far as it doth concern the Improbation, be not closed.

289. If the Defender be compearing in the Improbation, he cannot be absent in the Reduction, which has been oft found by the Lords, albeit it seemed to be very hard and prejudicial to the Defenders, who are forced to compear in the Improbation, for eschewing of the Certification, against which he will never be restored, if he be absent and produce not.

290. *Item*, Albeit the Pursuers in Reductions, may call for Production of Writs and Infeftments of the Lands wherein they are infeft, made to the Defenders, either by themselves, their Predecessors or Authors, or made by any other Person not being their Author, or made by the Defenders to others, yet the Defenders will not be obliged in the Production to produce all the Infeftments called for, but only such, against which there is a special Reason of Reduction and Improbation libelled; and if there be no special Reason libelled against the same, but that the same falls *in consequentiam*; in this Case there is no Necessity of Production, but it is enough that the Defender grants that the Writs falls *in consequentiam*.

291. *Item*, In Improbation the Defender may not be compelled to produce any Writs, but such as are made by the Pursuer himself, or his Pre-

Predeceſſors, to whom he ſucceeds, or by his Authors from whom he has Right; but if any ſuch Writs, which are neither made by the Purſuer, nor his Predeceſſors, and yet ſuch as may trouble him thereafter, be uſed in any Proceſs, either by Way of Exception, or by Way of Reply againſt any Party, that Party againſt whom the ſamen is uſed, may offer to improve the ſame in that ſame Proceſs.

Of Warnings and Removings.

292. *ITEM*, In Actions of Removing, the Defences are either peremptor of that Inſtance or of the Warning, or peremptor of the whole Cauſe. The Defences which elide the Inſtance only, are called Dilators; ſuch as, that the Party was not lawfully ſummoned, or that he was out of the Country the Time of the Citation, and not ſummoned upon Sixty Days Warning, or that he was Minor, and that his Tutors and Curators were not ſummoned.

293. The Defences againſt the Warning, are either againſt the Lawfulneſs of the Warning, or that the Tenant's Maſter is not warned.

294. The Objections againſt the Lawfulneſs of the Warning, are, That the Parties are not lawfully warned perſonally, or at their Dwelling-Place and upon the Ground of the Lands, and at the Pariſh Kirk on a *Sunday* before Noon, Forty Days before *Whitſunday*, or that the Warning is ſtoped

&c.

&c. But commonly the Judge is in Uſe to ſhow Favour, by giving Leave to the Purſuer to mend the Faults of his Warning, which ſhould not be done, after the Defender has accepted the Pieces and Order of Proceſs.

295. *Item*, The Exception of not warning of the Tenant's Maſter, is not only of the Nature of a Dilator, but alſo is peremptor of the Warning: And to the Relevancy of ſuch an Exception, it is required that the Defender alledge, That he was Tenant the Time of the Warning, and before, to ſuch a Perſon who has a real Right to the Lands, either by Infeftment or Tack, *&c.* and he not warned.

296. *Memorandum*, This Exception may alſo be proponed for an abſolute Peremptor of the whole Cauſe, and not of the Warning only; but then it wants theſe laſt Words, *And he not warned.*

297. And as theſe two Exceptions are different in their own Nature, ſo they muſt be elided by different Replies: For to the eliding of the firſt Form, a Reply of a better Right than that which is qualified in the Perſon of the Maſter is not proper, and will not be admitted, becauſe the Tenant is not obliged to diſpute upon the Maſter's Right, but a Reply upon a better Right will be moſt proper againſt the ſecond Form of Exception; and the Tenants will be compelled to anſwer thereto, where the Exception is proponed upon their Maſter's Right ſimply, and not with this Quality, That their Maſter was not warned.

298. *Item*,

298. *Item*, The common Reply againſt the firſt Form of Exception, is this, That the Purſuer offers him to prove, That the Defender was Tenant to him by Payment of Mail and Duty before the Warning, which Reply is ever found relevant in Favour of the Purſuer, in Reſpect the foreſaid Exception conſiſts in the Privilege, which a Tenant by Cuſtom has for his Defence, not to be removed till his Maſter be warned; and therefore when that Part of the Exception is elided, which bears, That he is Tenant to ſuch another Man, by a Reply, That he is Tenant to the Purſuer, the Force of the Exception is taken away.

299. And yet if the Tenant who propones the Exception of not warning of his Maſter, be able to make his Exception more pregnant nor the Reply, either in the Circumſtance of the Payment of Mail and Duty, or in the Manner of Probation, the Exception would be found relevant, notwithſtanding of the Reply: As for Inſtance, if the Tenant ſhall clear, that the Duty paid by him to the Purſuer (if any was paid to the Purſuer in his Maſter's Name) is for a Feu-duty or Tack-duty, due by the Maſter to the Purſuer; or if the Tenant offer to prove his Exception by Writ or Oath of the Purſuer; in which Caſe a Reply, that the Tenant paid Mail and Duty to the Purſuer, which is only offered to be proven by Witneſſes, will not be reſpected.

300. *Item*, The Exception, That the Defender is Tenant to his Maſter who is not warned, will not be ſuſtained, if the Purſuer offer him to prove that

that the Defender was Tenant input by him in the Land, albeit it be true, That thereafter the Tenant paid Mail and Duty to another Master, *quia tenens non potest mutare causam possessionis sui domini*, except it be cleared that the Tenant changed the Master, not voluntarily, but by Order and Course of Law, or by a Deed done by the Master.

301. *Item*, If it be evident and clear by the Pursuers own Right, That a Part of the Lands is excepted forth of the Sasine; and if the Defender alledge himself to be Tenant of the Lands excepted, to that Person in whose Favour the Exception is made, this Exception cannot be elided by a Reply, bearing, That the Defender is Tenant to the Pursuer, in Respect that the Pursuers Right is elided by his own Sasine.

302. *Item*, If the Tenant having the Benefit of this Exception, That his Master is not warned, do omit, the Master has a double Remedy for it; either he may compear for his Interest in the Removing, and propone his Defences upon his Infeftment, cled with Possession, and so stay the Decreet of Removing; or, if the Decreet of Removing be pronounced by his Knowledge, he may suspend the said Decreet, and get his Right discussed in the Suspension, without Respect of the Decreet standing, and will not be put to the Reduction thereof.

303. *Item*, If he compear before the Decreet, and desire to be admitted for his Interest; he being admitted, may propone his Defence upon his Right

Right *in duplici forma*; either that he is infeft, and in Poſſeſſion, and that his Tenant cannot be removed, except he had been warned; or upon his Infeftment and Poſſeſſion *ſimpliciter*.

304. And the firſt Manner of the ſaid Exception will be found relevant, becauſe theſe Exceptions are alike ſure in the Law, *viz.* That the Tenant cannot be removed except his Maſter be warned: And *next*, That an Heritor being infeft, and in Poſſeſſion cannot be put from his Poſſeſſion but by a Warning. And this was found in the Action betwixt *Scot* of *Tuſielaw*, and the Earl of *Nithiſdale*. And, if the Exception be proponed *ſimpliciter*, without this Addition, *Not warned*; in that Caſe the Parties come to diſpute *ſimpliciter* upon their Right, ſo far as the ſamen may be diſputed in a Removing, which is *judicium poſſeſſorium*, and no further: For if the Defender alledge an Infeftment cled with Ten Years Poſſeſſion, it will be found relevant in the Removing, notwithſtanding of the Purſuer's Reply upon an anterior Infeftment, preceeding the Defenders Infeftment; and the Purſuer will be put to his Action of Reduction.

305. The Difference betwixt theſe two Exceptions is not great; for where the Infeftment is cled with Ten Years Poſſeſſion, the ſame are coincident: But where the Infeftment is cled with fewer Years, as Four or Five, the Addition of *Not warned*, is neceſſary. But the Difference of the two Exceptions is this, That divers Replies may

may be proponed againſt this Exception made *ſimpliciter*, which could not be proponed againſt this Exception *qualificatè* (not warned).

306. For againſt this Exception being proponed *ſimpliciter*, theſe Replies will be ſuſtained, *viz.* That an Infeftment cled with Ten Years Poſſeſſion, whereupon the Exception is proponed, was a Wadſet under Redemption, and is redeemed. *Next*, That this Infeftment is reduced againſt the Party being lawfully ſummoned, finding the Lands to be recognoſced. But none of theſe Replies will be found relevant againſt the ſaid Exception proponed *qualificatè*, becauſe, albeit his Infeftment be redeemed, reduced, or recognoſced, yet he being Poſſeſſor, cannot be removed without a Warning; *& ratio rationis eſt*, becauſe he cannot be made liable to violent Profits without a Warning.

307. *Item*, Notwithſtanding that I think this moſt juſt and reaſonable in Point of Law, yet I know where the Lords have ſuſtained this Reply of Redemption or Reduction againſt the Exception proponed by a Tenant, alledging, That his Maſter was not warned; and where the Lords have found that there is no Neceſſity to warn that Maſter, whoſe Infeftment is redeemed or reduced.

308. *Item*, Where the Maſter ſuſpends a Decreet of Removing given againſt the Tenant, upon this Reaſon, That the Decreet of Removing was given upon Colluſion, in reſpect the Tenant omitted the foreſaid Defence, That the Maſter was not warned. The Lords do ever find this Rea-

ſon relevant, by Production of the Maſter's Saſine, and that without Reſpect of the Decreet of Removing ſtanding.

309. *Item*, If the Purſuers reply upon the Nullity of the Infeftment, whereupon Exception is proponed; in that Caſe, if the Nullity be *nullitas juris*, it will be received by Way of Reply: But if it be *nullitas facti*, it will be repelled in Reſpect of the Infeftment ſtanding; and the Purſuer will be put to his Action of Reduction. Albeit of the Civil Law theſe two (*ipſo jure*) and (*ope exceptionis*) be opponed; yet by our Practick they are all one; and to them is opponed *nullitas viâ actionis*; for *omne quod nullum eſt ipſo jure, nullum eſt ope exceptionis vel rei vel facti, & è contra*: But *nullitas facti* is not opponable by Way of Exception, but muſt be purſued by Way of Action.

310. *Nullitates juris* are properly theſe, where the Propoſition of Nullity is founded upon Law or Cuſtom; and the Aſſumption either *negativè quod non eget probatione*, or proven by Writ itſelf, againſt which the Nullity is proponed. But where either the Propoſition is not founded upon a clear Law or Cuſtom, or where the Aſſumption conſiſts *in facto*, which is not proven by the Writ impugned, ſuch Nullities are not receivable by Way of Exception, but by Action. As by Example, this Saſine is null, becauſe of Kirk-Lands, and not confirmed, or not regiſtrate in due Time; theſe are *nullitates juris*, where the Aſſumptions are *negativè*.

311. *Item*,

311. *Item*, Where it is opponed, That a Compriſing is null, becauſe uſed only upon Ten Days Warning, where the Law requires Fifeteen; and if this be proven by the Compriſing itſelf, it is *nullitas juris*, where the Aſſumption is *affirmativè* proven by the Writ impugned.

312. But if it be alledged againſt an Infeftment of Kirk-Lands, That it is ſet without Conſent of the moſt Part of the Chapter, or ſet with the Diminution of the Rental. In theſe Caſes, albeit the Propoſition be founded upon Law and Cuſtom, yet becauſe the Aſſumption is *facti*, and not proven by the Writ impugned, but requires the Probation of the Number of the Chapter, and of the Truth of the Rental: Therefore ſuch Nullities are not received by Way of Exception, but remitted to the Reduction; and yet there is an Exception from this Rule, where the Aſſumption conſiſts *in facto*, and is not proven by the Writ impugned; and it is daily received by Way of Exception, as this, That the Evident or Bond is null, becauſe it is made by the Party being Minor, *habens curatores*, and without their Conſent.

313. *Item*, There is alſo an Exception from the other Part of the Rule, *viz.* Where the Propoſition is founded upon Law or Cuſtom, and the Aſſumption either *negativè*, or proven *inſtanter* by the Writ impugned, and yet is not received by Way of Exception: As if a Tack of Teinds be alledged null upon the Act of Parliament 1594, becauſe it is ſet without Conſent of the Patron; which Nullity is not by our Practique admitted

by Way of Exception, whereof the apparent Reasons are theſe; 1*mo*, Becauſe it is a Right or Tack ſtanding cled with Poſſeſſion. 2*do*, Becauſe the Act of Parliament 1594, *ſtatuit tantum prohibendo, & non addit clauſulam anullantem vel irritantem.*

314. This Difference was alſo of the Civil Law, *inter leges jubentes & prohibentes*; and by the Opinion of the Doctors, *Lex præceptiva vel affirmans non ſortiebatur effectum abſque declaratoria, niſi præceptivæ legi adhæreret clauſula irritans: ſed de lege prohibitiva, ex opinione doctorum, non eſt neceſſe, ut ſubjiciatur clauſula irritans; quia ipſa prohibitio reddit actum aliter geſtum invalidum.*

315. By the Cuſtom of *Scotland*, theſe ſubtile Diſtinctions are not attended; but all Nullities are to be purſued by Way of Action, except where the Law declares the Deed null by Way of Exception or Reply.

316. *Memorandum*, Improbation and Falſhood are ever proponable by Way of Exception or Reply, if it be proponed *debito tempore, hoc eſt, ante litem conteſtatam*, where the Writs were produced *in initio litis*: But if it was not proponed before *Litis-conteſtation*, Writes being produced as ſaid is; in that Caſe the Improbation is repelled, and reſerved by Way of Action; and that becauſe it is preſumed by the Lords, that it is done *animo differendi litem.*

317. But if the Writ offered to be improven was not produced *in modum tituli, ante litem conteſtatam*

teſtatam, but *in modum probationis*; in that Caſe Improbation is ever received by Way of Exception; and it is ſingular in this Caſe, that there will be two *Litis-conteſtations* in one Cauſe, ſeeing this Improbation is ever proponed *poſt concluſionem in cauſa*.

318. *Item*, Improbation being proponed by Way of Exception before inferior Judges, the ſame can be followed only by the direct Manner, and not by the indirect, becauſe the Lords of Seſſion are only Judges to the indirect Manner of Improbation.

319. *Item*, The Party Improver cannot come to the indirect Manner, where the direct is fully extant; that is to ſay, where all the Witneſſes inſert in the Writ, and Writer thereof are living and examined; but where ſome of them are dead; in that Caſe they come to the indirect Manner per *præſumptiones & indicia*.

320. And where the Improver has the Benefit of giving in Articles of Improbation in the indirect Manner, the Party againſt whom Improbation is proponed, has alſo Place to give in Articles of Approbation.

321. *Item*, In the diſcuſſing of the Articles of Approbation and Improbation, *hoc eſt ſingulare*, that the Lords will not only receive the Depoſitions of Witneſſes, but alſo examine the Parties upon Oath; whereas, in all other Proceſſes, Oaths and Witneſſes are not compatible.

322. *Item*, In all Improbations, either by Way of Action or Exception, the Party who offers to

improve, muſt conſign a certain Sum of Money, at the Diſcretion of the Judge, which he will loſe, if he ſuccumb; and take up, if he prevail.

323. *Item*, Improbation either by Way of Action or Exception cannot be proponed againſt the Extract of an Evident, but againſt the principal Evident itſelf; and therefore commonly in all Improbations, the Clerk-Regiſter and his Deputs, in whoſe Hands the principal Writs remain, by Warrant of the Regiſter, are ſummoned for Exhibition thereof.

324. *Item*, It is to be remembred, That all Dilator Exceptions are to be verified *inſtanter*, otherwiſe ought to be repelled.

325. *Item*, All declinator or dilator Exceptions muſt be proponed before the Peremptor, otherwiſe they will be repelled: And yet a Horning, which, in Effect, is but a Dilator, may be proponed *omni tempore* for debarring of a Party either before or after *Litis-conteſtation*, and ſicklike of Excommunication.

326. *Item*, In Actions of Removing, the Defender is obliged to find Caution for the violent Profits, at the firſt Term after *Litis-conteſtation*; and if he fail in finding of Caution, Decreet will be given againſt him for that Cauſe to remove, except the Purſuer have a Reply to be proven, whereupon he uſeth more Diets, and Terms of Probation; for in that Caſe the Judge uſeth to give the Defender longer Time, and Occaſion to find his Caution; albeit in my Opinion, the Purſuer may take a Decreet for not finding Caution, albeit

albeit he prove not his Reply. But the Purſuers of Removings, are commonly loath to take Decreet, while their Reply be proven, if they be ſure to prove the ſame.

327. *Item*, This is a common Exception in Removings, That the Defender bruiks a Part of the Lands contained in the Romoving, by a good Right flowing from the Purſuer, or from any other Perſon, and bruiks the reſt *pro indiviſo*; or otherwiſe bruiks ſome Lands not contained in his Summons, either by a Right, or as Tenant to a third Perſon; and that he bruiks the Lands from which he is warned *pro indiviſo* therewith. And theſe Exceptions are ever found relevant in Law, and cannot be taken away by any Reply, except this one, That the Lands are divided, or ſeverally kend and known.

328. *Item*, In Removings, this Exception is uſually proponed, That the Defender is Tenant to ſuch a Third Perſon, who has Tack and Aſſedation from the Purſuer for Terms to run the Time of the Warning, at leaſt who bruiks *per tacitam relocationem*; which Exception is ſometimes admitted, ſometimes repelled, according to the Subſtance and Circumſtances of the Cauſe, and the Length and Shortneſs of the Time ſince the Tack expired.

329. *Item*, This Exception is uſually in Removings, That the Purſuer, ſince the Warning, has received Mail and Duty from the Defender; and ſo acknowledged him to be a Tenant, or that the Tenant has done Service, which is a Part of the

Duty of the Land. Which Exceptions are relevant, but with this Caution, That the Mail and Duty received, must be of the Year after the Warning is made; for as to the Year in which the Warning is made, the Tenant has Right to the Cropt after the Warning, and is obliged to pay Duty to his Master therefore; which is ever paid after the *Whitsunday* at which the Warning is made.

330. *Item*, Albeit the Tenant carry away the Cropt of Corns after he is warned, yet he has no Right to the Grass after *Whitsunday*; but if he meddle therewith, he may be pursued for the violent Profits of the Grass.

331. *Item*, This Defence is commonly received in Removings, *viz.* That the Pursuer promised to the Defender not to remove him a Year after the Warning; and this Exception is probable by Witnesses. But if the Exception be proponed upon a Promise made for Life, or for more Years than one, it is not probable by Witnesses, but by Writ or Oath of Party.

Of the Diversity of Decreets.

332. WHEN Decreets of Removing were given before the Sheriffs of old, there could no Horning be direct thereupon, till the Party Obtainer of the Decreet, did pursue the Party against whom the Decreet was obtained before the Lords, to hear and see Decreets and Letters conform, granted thereupon: But now by the late

late Act of Parliament 1606, *cap.* 10, this Decreet conform is not neceſſary, but Letters of Horning may be direct upon Decreets of Sheriffs, upon Supplication to the Lords, without Citation of the Party. But when the Party ſupplicates the Lords to get Letters of Horning, he muſt ſhew his Decreet, with the Precept raiſed thereupon, and the Executions thereof raiſed upon 15 Days Warning, to the Clerk of the Bills.

333. *Item*, Decreets, or Letters conform, are now commonly craved upon Rolments of Courts, or Decreets of Baron-Courts.

334. *Item*, Decreets conform are alſo craved upon Gifts and Proviſions to Benefices or Penſions, or Tacks of Teinds; in which there is no Citation of any particular Party, but allenarly a general Citation upon Six Days Warning at the Pariſh-Kirk, upon *Sunday*, or at the Market-Croſs of the Sheriffdom; albeit, if the Purſuers pleaſe, they may ſummon particular Parties who have Intereſt, to hear and ſee Decreet and Letters conform granted.

335. *Item*, By Act of Parliament 1592, *cap.* 140, all Letters of Horning generally direct, *againſt all and ſundry*, are prohibited; and yet the Lords, by their Practick, ſuſtain ſuch Letters, if the Party be charged for Payment of a Duty uſed and wont to be paid by them.

336. *Item*, When Decreets are given before the Lords of Seſſion, either conform to the Decreets of inferior Judges, or upon Summonſes uſed before themſelves *via ordinaria*, ſo ſoon as the Decreet

Decreet is given, the Decreet itſelf is an immediate and ſufficient Warrant to any Writer to the Signet to raiſe Letters of Horning and Poinding thereupon, and that without Bill or Supplication made to the Lords; and the Writer to the Signet writes to the End of theſe Letters theſe Words, *Per Decretum Dominorum Concilii.* But when Letters are direct, upon Supplication made to the Lords, the ſame bears, *Ex deliberatione Dominorum Concilii.*

337. *Item*, Where Bonds or Contracts are regiſtred in the Books of Council by Conſent of the Party, bearing this Clauſe, *That they conſent, that Letters of Horning and Poinding ſhall be direct upon a ſimple Charge of ſix or ten Days Warning*: The ſame are warrant to the Writer to the Signet to draw up Letters in the ſame Form as if the Decreet were given before the Lords upon Citation of Party.

338. But there is this Difference betwixt Letters of Horning upon Decreets conform, upon a general Citation, or upon regiſtred Bonds or Contracts, which are accounted Decreets on the one part, and Decreets given before the Lords, by Citation of a particular Party, which is called *via ordinaria*; For the *Firſt* may be ſuſpended upon whatſoever Reaſon is relevant of the Law, and the Reaſon muſt be diſcuſſed *in jure*, without reſpect of a Decreet ſtanding: But in the *Second* Caſe, where a Party is cited particularly, albeit Suſpenſion be raiſed againſt the Decreet; yet when the Suſpenſion comes to be diſputed, the Party Obtainer

Obtainer of the Decreet has this Privilege to oppone againſt all the Reaſons of the Suſpenſion (except they be Deeds done by the Charger ſince his Decreet,) That notwithſtanding the Reaſons, his Letters of Horning ought to be found orderly proceeded, in reſpect of the Decreet ſtanding unreduced; and the Reaſon hereof is, that a Decreet being given againſt a Party particularly cited, it is thought agreeable to Juſtice to debar him by way of Suſpenſion, in reſpect of his Contumacy, and to put him to the Trouble and Neceſſity of reducing the Decreet.

339. But if the Suſpender, *ſimul & ſemel*, with the Suſpenſion, intent Summons of Reduction of the Decreet, and have his Reduction ready to be diſputed at the Time when the Suſpenſion comes to be diſcuſſed; the Lords are in uſe either to lay over the Suſpenſion till the Reduction be diſcuſſed, or elſe, if they pronounce Sentence in the Suſpenſion, they pronounce it with this Quality, *Suſpending the Execution* to ſuch a reaſonable Time as they ſhall think fit, within which the Party may do Diligence to get his Reduction decided: And if at the End of that Time the Lords find, that he was diligent, *& quod per eum non ſtetit*, they are in uſe to prorogate the Term of the ſuſpending of the Execution.

340. There is another Caſe wherein *via ordinaria* is opponed to Decreets of Regiſtration or Transferring; for albeit the Party be cited particularly to hear and ſee a Bond or Contract regiſtred, or to hear and ſee a Decreet transferred, yet that

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is not counted *via ordinaria*, becauſe the Summons concludes not the Party to be decerned to pay any Sum, or do any particular Deed, but only to hear and ſee a Bond or Contract regiſtred, or Decreet transferred. Which Concluſion being *aliquid multiplex & collectivum*, comprehending all that, which is in the body of the Bonds and Contracts craved to be regiſtred, or Decreets craved to be transferred; the ſame cannot be elided but by an Exception total and univerſal, and as large and ample, as is the Concluſion, *viz. That the Bond craved to be regiſtred, or Decreet craved to be transferred, is renounced and diſcharged by the Purſuer* in totum.

341. And therefore, by the Practick of the Houſe, a partial Exception is never admitted againſt a Summons of Regiſtration or Transferring. But notwithſtanding thereof, the Lords will ordain the Bond to be regiſtred, or Decreet transferred; reſerving to the Party Defender his partial Exceptions to be diſcuſſed by way of Suſpenſion.

342. But where the Lords find, that there is ſome Probability in the partial Exception, and that the Defender, in reſpect of the Greatneſs of the Sum contained in the Bond or Decreet, will hardly be able to find Caution at the Time of the Suſpenſion; They are in uſe to grant Suſpenſion *pro primo*, without Caution or Conſignation.

343. *Item*, At other Times they are in uſe to reſerve the partial Exceptions to be diſputed by way of Suſpenſion, with the like manner of Probation as was competent, if the ſame had been admitted

mitted againſt the Summons of Regiſtration and Transferring; and the Reaſon and Juſtice of this is evident, for the Defender would have Terms of Probation, if his partial Exceptions were admitted. But when the ſame comes to Suſpenſion, wherein all muſt be proven *inſtanter*, according to the Practick, he will get no Term of Probation, except the ſame be particularly reſerved to him.

344. *Item*, Albeit partial Exceptions be not admitted againſt Summonſes of Regiſtration or Transferring, yet if the Defender propone ſeverally as many partial Exceptions as (being conjoined) will elide the Subject of the Summons *in totum*, the ſame is admiſſable.

345. *Item*, There is a great difference betwixt Decreets given *via ordinaria*; that is to ſay, by a particular Citation of the Party *ad effectum particularem*, and the other Decreets either given by Conſent, or upon general Citation, and alſo Decreets given upon Suſpenſion, which are alſo counted to be opponed to *via ordinaria*: For where a Decreet is obtained againſt a Party being lawfully cited *ad effectum particularem*, if it be obtained againſt a Party not compearing, it has the Benefit of a Decreet ſtanding, ay and while it be reduced, *ut ſupra*: And if it be obtained againſt the Party compearing, it is unreduceable, and he will never be heard to call the ſame in queſtion, becauſe either he proponed his Defences, which were diſcuſſed in his contrary, or he omitted the ſame, being competent *in prima inſtantia*; and in reſpect of his Omiſſion, he will never be heard to reduce

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in ſecunda. But in all other Decreets the Party has Liberty to propone whatſoever Reaſons, by way of Suſpenſion: And albeit Decreet be given againſt him in that Suſpenſion, yet he will be heard to ſuſpend *de novo*, upon new Reaſons, notwithſtanding the ſame was competent to him the Time of the raiſing of the firſt Suſpenſion.

346. And in the Decreets of Suſpenſion which are given betwixt Parties compearing, they are in worſe Caſe than in the Decreets given upon Summonſes *via ordinaria*; in which, Sentence given *parte comparente*, cannot be reduced, *neque ſuper eiſdem deductis, neque ſuper competentibus & omiſſis*: Whereas in Decreets given upon Suſpenſions, Parties will be heard to ſuſpend, not once only, but many Times after, providing the ſame be raiſed upon new Grounds which were not diſcuſſed in former Suſpenſions, notwithſtanding the ſame were competent, but omitted at that Time.

347. *Item*, There is only one Caſe wherein the Lords will not admit a Party to ſuſpend upon a new Reaſon, after Decreet given upon the firſt Suſpenſion; which is this, If the Charger, by the Suſpender's Omiſſion, be prejudged of his Anſwer and Defences againſt the Reaſons; as for Example, If the ſecond Suſpenſion bear, That the Bond whereupon the Letters are raiſed is null, becauſe it is only ſubſcribed by one Notar, being in a Matter of great Importance, above 500 Merks: And if the Party Subſcriber ſuſpend in his own Time, but not upon this Reaſon, and the Decreet was given againſt him; his Heir or Cautioners cannot ſuſpend

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de novo upon this Nullity, in reſpect of the Decreet given againſt the Defunct compearing, and that the Charger is prejudged of his Defence againſt the ſaid Reaſon of Nullity, *viz. That he would refer the Truth of the Subſcription and Command given to the Notar, to the Defunct's Oath, which cannot now be had, in reſpect of the Defunct's Deceaſe.*

348. *Item*, Albeit Decreets given *parte comparente*, are irreduceable, either *ſuper eiſdem deductis*, or upon a Reaſon of Reduction which was competent by way of Defence, *in prima inſtantia*, and omitted; yet there be ſome Caſes in which ſuch Decreets might be called in queſtion by way of Reduction, and that either *principaliter* or *in conſequentiam.*

349. *Principaliter*, where the Reaſons of Reduction are either emergent, *poſt litem conteſtatam*, or *noviter venientes ad notitiam:* And in the emergent Reaſon, there is no Queſtion, if it was emergent *poſt ſententiam*; but if it was emergent only *poſt litem conteſtatam*, *ſed ante ſententiam*, in this Caſe, if it was proponed *ante ſententiam*, and reſerved, it is competent; but if omitted *ante ſententiam*, it will hardly be admitted.

350. And as to *noviter venientes ad notitiam*, they have been often urged *poſt litem conteſtatam*, & *ante ſententiam*, and ſometimes *poſt ſententiam* in a Reduction: But the Lords were exceedingly loath to admit them, becauſe they thought it a loſing of all Sentences, and a Way to make *lites infinitas*, ſpecially ſeeing *notitia & ſcientia* have no other Probation but the Oath of the Proponer, except

cept the Party be able to induce ſuch pregnant Preſumptions whereupon he may enforce his Knowledge *in conſequentiam.*

351. Decreets obtained *in foro contradictorio*, may be reduced *in ſecunda inſtantia*, if the Inſeftment and Right, which was the Title of the Summons whereupon Decreet is given, ſhall be craved to be reduced or improven *principaliter*; which being done, the Decreet muſt fall *in conſequentiam.* And in this Caſe the Defender cannot oppone the Decreet obtained *in foro contradictorio*, becauſe that which is craved to be reduced *in conſequentiam*, upon a relevant Reaſon againſt the Principal, cannot be opponed to elide the Reaſon, becauſe the Decreet is craved to be reduced: But this Reduction of the principal Title is only admiſſable, where the Reaſons of Reduction are ſuch as were not competent by way of Exception of Nullity, *in prima inſtantia*; for if the ſame had been competent *in prima inſtantia*, by way of Exception, the ſame will not be received by way of Reduction *in ſecunda.* But if the ſame was proponed *in prima*, and repelled, in reſpect of the Inſeftment ſtanding, then queſtionleſs it will be received *in ſecunda inſtantia.*

352. And hereupon may ariſe a great doubt of Nullities, which are competent both by way of Exception and Action; and namely in Improbations, whether the Omiſſion of them *in prima inſtantia*, will exclude them *in ſecunda*; *de quo cogitandum.*

353. *Item,*

353. *Item*, According to this Course, Retours, which by the Law were irreduceable after three Years, if the same be pursued principally, may be reduced *in consequentiam*, after twenty or thirty; if the Rights and Infeftments, which were the Grounds whereupon the Retours proceeded, shall be craved to be reduced principally and primarily, and the Retours to fall *in consequentiam*.

Of Assignations.

354. AN Assignation made by an Heritor of Lands to the Mails, Farms and Duties thereof for a certain Number of Years to come, while a certain Sum be paid which was owing by the Cedent to the Assigney, is not *habilis modus* to establish a Right in the Person of the Assigney, but allenarly, so long as the Cedent remains Heritor of the Lands: For if the Cedent resign the Lands, in the Hands of the Superior, in Favour of a third Person, who thereupon obtained Infeftment; or if the Lands were comprised from the Cedent, and the Compriser infeft: In these Cases, the Assigney will be excluded from the Mails and Duties, and Benefit thereof assigned to him; and the third Person who is infeft, either upon Resignation or Compriſing, will be preferred to the Assigney *quoad* the Mails and Duties of all Years and Terms after the Date of the Sasine.

355. *Item*, If the Right which ſtood in the Perſon of the Cedent, was a Right of that Nature which was tranſmiſſable by ſimple Aſſignation, without Saſine, as a Right of Liferent: In this Caſe, the Aſſignation to the Liferent, being cled with Poſſeſſion, or lawfully intimate before Compriſing, will be preferred to the Compriſer, or to any other ſingular Succeſſor.

356. It is always to be underſtood, that the Liferent be aſſigned formally; for if it be not formally aſſigned, but only an Aſſignation made of the Mails and Duties for the Space of two, three or more Years: In that Caſe, if the Liferent be formally diſponed or compriſed thereafter, the Aſſignation will not be valid againſt a ſingular Succeſſor who acquires a real and formal Right with the Liferent; and yet this may be doubted, becauſe whatſoever is aſſignable in whole, is alſo aſſignable in part. And it is out of Queſtion, that a Liferent is diſponable without Saſine, and therefore a part thereof may alſo be diſponed by Aſſignation: But in my Judgment the Argument is not good, becauſe the Propoſition is not univerſally true, nor yet the Ground of Law whereupon it is founded, *quod eadem ſit ratio totius & partis; quia totum habet ſuam diverſam rationem à partibus, & differunt omnes partes ſeparatæ à toto conjuncto*: And therefore in this Caſe, where a Liferent may be diſponed by Aſſignation, it is meant of the Liferent, *quatenus eſt jus totale*; and by the making thereof, the Liferenter is fully and totally denuded: Whereas, by Aſſignation to Terms or particular

cular Years, the Right ſtill remains, and the Liferenter is not denuded. And further, this Aſſignation to particular Years is *actus de jure illicitus*; for if the Liferenter die during the Years diſponed, the Aſſignation is null: And to clear that *aliquid totum eſt ceſſibile, ubi partes non ſunt*, it appeareth by this Inſtance, that a Reverſion may be diſponed *in toto*, but not *in parte, quia eſt jus reale unicum & unitum in ſe*; but the general Propoſition is true in perſonal Bonds, which admit Diviſion, but not in total Rights, *quæ habent unitatem juris pro forma*, as is in all Liferent Rights formally eſtabliſhed; and in the Titles of Benefices provided *ad vitam*, which are Liferent Rights, and diſponable *in toto* by Dimiſſion or Reſignation, and not by Aſſignation to any particular Years of the Rents thereof: And which is further, not by a total Aſſignation to his Liferent Right of the Benefice, whereof the Reaſon is coincident with the former, becauſe the total Aſſignation denudes him not of the Right of the Benefice, but he remains Titular notwithſtanding thereof, becauſe the Title of the Benefice is not diſponable by Aſſignation.

Of Tailzies.

357. THere is a Difference betwixt a Bond or Contract of Tailzie, and an Infeſtment of Tailzie paſt without Bond or Contract; for an Infeſtment of Tailzie is *ab initio voluntatis*, and

remains ever arbitrary and changeable at the Will of the Maker of the Tailzie and his Heirs, except there be a Clauſe and Proviſion infert in the body of the Infeftment or Procuratory of Reſignation whereupon it proceeds, whereby the Tailzier ties and reſtrains either himſelf or his Heirs. But theſe Proviſions are extrinſick, and not of the Nature of Tailzie.

358. *Item*, As to the Bonds or Contracts of Tailzie, they are either made *ex cauſa affectionis & meræ donationis*, or *ex cauſa oneroſa*, or by way of mutual Tailzie.

359. In Bonds of Tailzie made *ſine ulla cauſa*, except that of Affection, the common and received Opinion is, That they are not obligatory, and in Effect are counted Donations, *mortis cauſa*, which are ever revokable. Some think, that *obligant quoad hoc* to make the Tailzie, and think the making thereof the Implement of the Obligation; but grant, that when the Infeftment of Tailzie is perfected, that the Maker thereof may alter or change the ſame when he pleaſes, by reſigning *de novo*, and paſſing an new Infeftment with Change of Heirs.

360. And if this Opinion holds, it will follow, that a Bond of Tailzie will oblige alſo the Heir of the Giver of the ſame *ad hoc*, to perfect the Tailzie; and if this be granted, it will deſtroy the ſecond Part of their Opinion, which is, That the Infeftment of Tailzie may be changed after it is made; for none can change an Infeftment of Tailzie after it is perfected, but they who are *proximi* and firſt in

in the Tailzie the Time of the Change: But the Heir of the Maker of the Bond (being poſſibly his Daughter) cannot be of the Tailzie, when the Inſeſtment ſhall be expede upon her Reſignation, which deſtroyeth the ſecond Part of their Opinion.

361. Their Anſwer to this is, That their Opinion for the ſecond Part thereof is ſafe, in ſo far as concerns the Maker of the Tailzie, who having paſſed an Infeftment of Tailzie conform to the Bond, hath Liberty to alter in his own Time when he pleaſes; but if he die but change, in that Caſe they think, that as the Infeftment of Tailzie cannot be altered in Prejudice of that Perſon who was firſt in the Succeſſion of the Tailzie, ſo the Bond which was not fulfilled nor revoked by the Maker in his own Time, is obligatory againſt the Heir for ever, and yet they will give Place to the firſt Perſon of the Tailzie to alter the ſame when he pleaſes, as well as the Lands may be annailzied by him, or comprifed from him. But that a Bond of Tailzie is not obligatory *ad hunc effectum*, to paſs an Infeſtment of Tailzie thereupon, where the Bond was made *ſine cauſa oneroſa*; it was decided in the Action betwixt *Walter Maver* and Mr. *Thomas* his Brother, whereof the Cauſe was this: *Walter Maver* his Father's eldeſt Son of the ſecond Marriage, and having only Siſters, gave Bond to Mr. *Thomas Maver* Advocate, his eldeſt Brother of the firſt Marriage, whereby he obliged himſelf to reſign his Lands and Tenements in the Superior's Hands, for new Infeftment, to be given to himſelf

and his Heirs Male of his Body; which failing, to the ſaid Mr. *Thomas* his Brother and his Males. Thereafter, *Walter* being a facile young Man, and moved to do ſome Deeds in Prejudice thereof; and for Prevention thereof, Mr. *Thomas* ſerved Inhibition againſt *Walter*: Whereupon *Walter* intented Summons before the Lords, to hear and ſee the Inhibition reduced, and *ſimpliciter* ſuſpended. In which Cauſe this Point was diſputed, That as he might alter the Infeftment, if it were made, ſo he might revoke the Obligement itſelf. And on the other Part it was contended, That the Bond behoved to be fulfilled. But the Lords, by their Interlocutor and definitive Sentence, *Found the Reaſon of Reduction foreſaid relevant, founded upon his Revocation of the Obligement, and reduced the Inhibition, and ſuſpended the ſame* ſimpliciter; *and that becauſe the Bond of Tailzie was given* ex nulla cauſa oneroſa, *but allenarly of Free-will.*

362. But where the Bond or Contract of Tailzie is made for a true onerous Cauſe, or where Tailzies are reciprocal in a Contract; in this Caſe, the ſame are not revokable but by Conſent of Party, as was decided *Sharp* againſt *Sharp*.

363. And yet ſuch reciprocal Contracts are reduceable, where one of the Parties Contractors has in his own Time done one or more Deeds contrary to the Contract, by ſelling his Lands which he was obliged to tailzie, or doing of that which may make him unable to fulfil the ſame; as was found betwixt *Spence* and *Spence*, and betwixt the Earl of *Home* and *Coldingknows*.

364. But

364. But where the Tailzies are not reciprocal, or proceed not upon true onerous Cauſes; there is no queſtion but the Tailzie may be broken by the Party Maker thereof, either by himſelf or by his Heir; except there be a ſpecial and expreſs Clauſe contained in the Infeſtment of Tailzie, or Bond or Contract whereupon the ſame proceeds, *That it ſhall not be lawful for his Heirs to break the ſame*; In the which Caſe, the Tailzie may not be broken, but the Party in whoſe Favour the ſame is conceived, may uſe Inhibition thereupon.

365. And yet there may be many Ways found out by the which this Proviſion may be fruſtrated; and there is no Queſtion but the Lands may be compriſed for anterior Debts contracted before the Inhibition.

366. *Item*, There may be ſome Queſtion anent the Debts contracted after the Tailzie, and before the Inhibition; but, in my Judgment, upon ſuch Bonds, Compriſing may be uſed upon Debts contracted *ante inhibitionem*, uſed againſt the Party Maker of the Tailzie, or againſt the firſt Heir of Tailzie who ſucceedeth him as the next in the Tailzie; becauſe the Party Maker of the Tailzie remains Fiar of the Lands, and becauſe after his Deceaſe, the firſt Perſon of the Tailzie being infeſt upon Retour, is alſo Fiar; and every Fiar may diſpone upon his own Lands, except he be lawfully reſtrained: And therefore, *multo magis*, the Lands may be compriſed from them *ante inhibitionem*.

367. But to prevent and remeid this, there is a new Form found out, which has theſe two Branches, *viz.* either to make the Party Contracter of the Debt to incur the Loſs and Tinſel of his Right, in Favour of the next in Tailzie, or to declare all Deeds done in Prejudice of the Tailzie, by Bond, Contract, Infeftment or Compriſing, to be null of the Law.

368. And as to the firſt of theſe Proviſions, there is no Queſtion but it will have Effect againſt the Heir of Tailzie *ad hunc effectum*, to exclude him from the benefit of the Infeftment, in reſpect of the Failzie committed by him againſt the Condition of the Tailzie; and this is certain *quoad* Deeds done ſince the Tailzie. But if the Debt be contracted before the Bond of Tailzie, it may be controverted, whether if a Compriſing led againſt him upon theſe Debts, ſhould be counted a Failzie *ad hunc effectum*, to deprive him of the benefit of his Infeftment, in Favour of the next Perſon of the Tailzie: But in my Judgment it ſhould *quoad eum*, becauſe he having accepted the benefit of the Tailzie upon that Condition, he was bound to have paid his own Debts contracted before the Tailzie, to evite the Danger of the Failzie: For the Continuation of the Bonds and Debts unpaid after the Tailzie, are equivalent as if he had contracted them after the Tailzie. But what if after the Compriſing he redeem the ſame? *Quæritur*, If *ſemel commiſſum poſſit purgari, an non?* And this Point is very diſputable *in utramque partem*; for by the Failzie once committed, *jus eſt acquiſitum*, to

to the next of Tailzie, & *nemini poteſt tolli jus quæſitum ſine ſuo conſenſu*; and the like ſhould be in this, as in *apertura feudi* by Alienation made without Conſent of the Superior, wherein 'tis certain, that if once Saſine be given of Ward-Lands, albeit under Reverſion, and redeemed before the Superior intent his Proceſs of Recognition, yet the ſame remains ſtill a Ground whereupon the Lands may be recognoſced. And on the other Part it may be alledged, That the Compriſing not being a direct Deed of the Heir of Tailzie, but only inferred by Conſequence or Equipollence, that the like cannot be here as in Recognitions. *Next*, if it be redeemed before the intenting of the Proceſs by the ſecond or ſubſequent Heir of the Tailzie, all Prejudice ceaſeth; which muſt be chiefly reſpected in this Caſe; for *ratio & finis proviſionis* is to tranſmit the Heritage to the Heirs of Tailzie, unhurt or prejudged; whereas in the other of Recognition, the chief Reſpect is not the Prejudice, but the Contempt done to the Superior; which Contempt remains unpurged. In my Judgment I would admit Purgation being done before the Summons raiſed at the Inſtance of the next Heir of Tailzie, becauſe ſuch Conditions are odious in Tailzies, & *contra libertatem dominii*, & *jus commercii*; but after the Party is cited, to hear and ſee him deprived of the Heritage for the Failzie, it were hard to admit him to purge thereafter.

369. Now *quæritur*, if the like ſhould be, where the Heir of Tailzie has directly committed againſt the

the Proviſion, by giving Infeftment of the Lands, either redeemably or irredeemably? and if it ſhould be alike in this Caſe as in Compriſings? *de quo cogitandum*; albeit the Compriſing or Infeftment might work *quoad* the Heir of Tailzie, to exclude him for his Failzie, yet there remains a Queſtion to be ſolved, Whether it will work againſt the Creditor who has compriſed, or to whom Infeftment was granted? To the which it is anſwered, *Quod non*, except in two Caſes, *viz.* If the Lands were compriſed, or Infeftment were given *poſt inhibitionem*; or if the Tailzie did bear a Clauſe irritant, declaring all Deeds done in Prejudice of the Tailzie, by Bond, Infeftment or Compriſing null, *ipſo jure*. And there is no Doubt in the firſt Caſe, *viz. poſt inhibitionem*. But in the ſecond Caſe, there is ſome greater Difficulty; for here we fall in upon the Conſideration of the ſecond Manner of Proviſions inſert in Tailzies; and concerning thir Proviſions, the firſt Queſtion to be moved is, If they be lawful or not? Which being well ſolved, will clear all the other Queſtions. There is a General in the Law, which apparently will ſolve the Queſtion, *viz. Quod privatorum pactionibus non poteſt derogari juri publico*: And therefore it is to be conſidered, whether ſuch Conditions contain any Thing derogatory to the Publick or not; and whatſoever is therein exorbitant againſt the common Law, in ſo far I think it null: But in ſo far as it is allenarly obligatory betwixt the Parties, & *omnes habentes jus ab iis*, I think it may ſtand. The Common

Law

Law ordains all Traitors and Rebels to be puniſhed, not only in their Bodies, but in their Lands and Goods. Now, if the Heir of Tailzie commit Treaſon, or be Year and Day at the Horn, I doubt not but in Treaſon, the Fee of the Lands will pertain to the King; and in Rebellion, by Year and Day, the Liferent will fall; and that notwithſtanding whatſoever Form or Conception of the Condition contained in the Tailzie. *Ratio*, becauſe Subjects cannot agree and contract upon ſuch a Condition as derogates to the publick Law introduced in Favour of the King, and for Puniſhment of Crimes. It may be doubted if the like may be ſaid in other Superiors beſides the King's Majeſty. To the which it is anſwered, That where the Superior has the only Intereſt, I think he has prejudged himſelf, becauſe he has conſented to the Condition contained in the Tailzie; for a Tailzie cannot be made without Conſent of the Superior; and if the Right and Infeftment granted to the Heir of Tailzie, ſhould be reduced at the Inſtance of the next Heir, by Occaſion of the Failzie, the Superior could not oppoſe againſt the ſame; and the Infeftment being reduced, all Intereſt behoved to ceaſe, which the Superior might pretend by Virtue of that Infeftment which is reduced, either for Fee or Liferent.

370. And as to any other Perſon beſides the King's Perſon, and the Superior, whether they be ſimple Creditors or Compriſers, or have gotten Infeftment by Alienation, under, or without Reverſion

ſion, *eorum omnium eadem eſt cauſa & ratio*, becauſe they cannot have the Right, *niſi cum ſua conditione & cauſa.*

Nota, Poinding muſt always go before Compriſing; and therefore ſince I cannot poind but for a Debt, whereof the Term of Payment is come and bygone, neither can I compriſe but for the like Debt. It is otherwiſe in Adjudications; for when I charge one to enter Heir to my Debitor, that I may have ſicklike Action and Execution againſt him, as againſt the principal Debitor; if he renounce to be Heir, then I have Recourſe *contra hæreditatem jacentem*, that *omne jus* thereof may be adjudged to me, not only for bygone Debt, whereof the Term of Payment is come, but alſo for Debts which have *tractum temporis futuri*, as Liferents, *&c.* And if another Creditor come in, he muſt not only pay me all Bygones; but alſo give me Security for all Time coming, before I be holden to quite my Right in his Favour; and ſo it ſeems that Compriſing is only Execution, but Adjudication carries both Action and Execution.

FINIS.

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A

DISCOURSE

ON THE

Riſe and Progreſs

OF THE

LAW of SCOTLAND,

AND THE

Method of Studying it.

By ALEXANDER BAYNE. J. P.

For the Uſe of the STUDENTS of the MUNICIPAL LAW.

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A

DISCOURSE

ON THE

Riſe and Progreſs

OF THE

Law of Scotland.

ALL the Sciences are, in the General, uſeful, as they convey to our Minds the Knowledge of Truths of different Natures, by which we not only improve and cultivate the natural Lights of Reaſon, but in the Exerciſe of our Faculties, in our Enquiries of that Kind, we attain to a Habit of diſcerning accurately, the different Natures of Things, of diſtinguiſhing

ſtinguiſhing them with Exactneſs, and of judging better of them by thoſe acquired Helps, than it is poſſible for us to do, by the bare Lights of our natural Reaſon, without the Aid of the Sciences. For, by their Means, we are enabled to range our Thoughts into better Order, and to communicate and explain them, with greater Perſpicuity in all Matters wherein we happen to be converſant.

Of all the Sciences, that which tends directly to the Service of Religion, claims the firſt Place; the others being of a lower Rank, are properly diſtinguiſhed from that of Theology, by the Name of *Humane Sciences*.

Among the humane Sciences, that which has the neareſt, and moſt immediate Relation to the Order of Society, and to the publick Good, is, without Queſtion, the Science of the higheſt Character; and, as being the moſt uſeful to Mankind, is beſt entituled to the firſt Place, and ſuch is the Science of the Law.

It is the Law which regulates the Juſtice that Men owe to one another, in all the various Affairs and Intercourſes of Life; and it comprehends not only the Rules by which theſe Affairs and Intercourſes are governed, but the Rules of the Functions, and Duties of thoſe to whom the Adminiſtration thereof, is committed.

As the Science of the Law, is that which is of the greateſt Account to Mankind in general, ſo, with reſpect to each particular State, is the Knowledge of its proper Law; the Knowledge of the

Laws

Laws of other States and Kingdoms, is no otherwiſe to be conſidered, as truly uſeful to us, than as it may conduce to the better Underſtanding of our own: For altho' the Study of any Law engages a cloſe Exerciſe of the rational Faculties; and by ſuch Exerciſe, the Judgment and Underſtanding is inſtructed, whereby it becomes an Accompliſhment; yet ſtill, I ſay, the Knowledge of the Laws of other Countries is chiefly uſeful, as it may conduce to give us a more perfect Knowledge of our own; for it is our own proper and peculiar Law, which ought to be our chief Study. And I may be bold to ſay, That our own Municipal Law does not only recommend it ſelf to us, chiefly as being ours, but alſo by its own inherent Excellency; which will appear to us in a ſtrong Light, in this Conſideration.

As the Laws of all the preſent flouriſhing States of *Europe* are in a greater or leſs Meaſure form'd after thoſe antient Models, wherein right Reaſon ſhin'd forth in its brighteſt Luſtre; ſo the Excellency of the particular Laws of any Country, is generally aſcrib'd to the nearer Reſemblance they bear to thoſe admirable Laws of Antiquity.

Now in this View, our own Municipal Law compared with the Municipal Laws of other Kingdoms, is well entituled to the firſt Claſs in Rank and Dignity,

Becauſe the Spirit of that Law, which has been ſo univerſally received, ſhines forth in our Law, in a moſt conſpicuous Manner, and bating the Remains of Feudal Law, which the Barbarity of

later Ages had introduced, and made unavoidable to us, eſpecially in Matter of Succeſſion; the other Parts of our Law, are either form'd after the Pattern of the *Roman* Law, or directly borrowed from it, without the leaſt Mixture of Northern Barbariſm.

Thus our own Municipal Law does not only recommend itſelf to the Study of the Ingenious as it participates in a large Meaſure of the Spirit of thoſe excellent Laws of Antiquity; but by being the eſtabliſhed Rule of the Adminiſtration of Juſtice in the Country to which we belong, the Knowledge thereof becomes a neceſſary Part of Education to all thoſe who either purpoſe to ſerve their Country in a more publick Station, or who deſire to be uſeful to their Friends and Neighbours in a private Life.

And ſince the Knowledge of our Law is ſo neceſſary an Accompliſhment, it is a Happineſs that the Study of it is rendered ſo much the more agreeable by its borrowed Luſtre from the *Roman* Law.

The Hiſtory of our Law lies very much in the Dark; for our Lawyers of former Times have left us few of their Works, and none of them are of that Kind: So that we have but few Helps to guide us in our Enquiries after the Sources from which many of our ancient Laws and Cuſtoms have ſprung.

In thoſe Reigns of our ancient Kings, wherein Civil Feuds and Diſcords made the Uſe of Arms ſo well known among us, we are not to expect to

to find the Veſtiges of Law: For Laws were of little Account, when every Head of a Family, or Chief of a Name aſſumed to himſelf a Power to determine all Matters of Controverſy with his Neighbours, by the Dint of his Sword. And the few Laws which may have then prevailed, were, in all Probability, founded only in long Uſage and Cuſtom; of which, no Doubt, the Remains are blended and mixt with our preſent Law, altho' the Darkneſs and Obſcurity which cover the Hiſtory of thoſe antient Times, forbid us the Pleaſure to diſtinguiſh them from theſe conſuetudinary Laws, which are of later Date.

The oldeſt Laws we have any Account of, are theſe of *Kenneth* II. who began to reign about the Year 834, of which *Hector Boetius*, and ſome others have given us a formal Regiſter, but upon what Authority is altogether uncertain; and at beſt it is likely to have been no other than Oral Tradition.

However our learned Sir *Thomas Craig* pays that Regard to theſe Laws, as to make Uſe of their Authority to prove the Time when the Feudal Law was firſt introduced into *Scotland*; and on the ſame Occaſion he mentions ſome other Laws of *Kenneth* III. But ſtill we are not to take that learn'd Author's Notice of theſe Laws, as a Proof of their being abſolutely authentick, when we conſider the Occaſion on which he mentions them; namely, to prove that the Feudal Law was introduced into *Scotland*, before it found its Way into *England* by the Conqueſt: For that

was a Point which he ſeem'd to be very forward to eſtabliſh; and no Doubt the Paſſion he had for the Honour of his Country, would eaſily and naturally induce him to lay hold of the ſmalleſt Helps, and to build upon the Authority of Laws, which perhaps on any other Occaſion he would have very much called in Queſtion. I ſay therefore, we are not blindly to receive them on his Word, ſince we have no Manner of Account of them, but in the Writings of Men who lived ſome Ages after; and to whom the Authority of theſe Laws in the Ninth Century, was as little known with any Meaſure of Certainty, as it is to us at preſent.

Next to theſe in Age are the Laws of *Malcolm* II. who began his Reign in the Year 1004, of which Sir *John Skeen* affirms he has given us an authentick Collection, which he has prefixed to his Edition of the Books of *Regiam Majeſtatem*; but whether theſe are the Laws of *Malcolm* II. is much to be queſtioned. The learned Sir *Henry Spelman*, among others, ſeems very much to doubt of their Antiquity, in theſe Words, *Plurima enim illic vocabula recentioris ævi, mores etiam nonnulli, magiſtratuumque & miniſtrorum nomina.* He obſerves in them the Cuſtoms, Language and Names of Magiſtrates and other Officers of a much later Age, and altogether unknown in thoſe Times.

This learned Author, who on ſeveral other Occaſions does not ſeem in the leaſt diſpoſed to detract from the Antiquity of our Laws, is the more

to

to be regarded, and eſpecially when he gives an Opinion in a Matter of which he was ſo great a Judge, namely, the Antiquity of certain Offices, and certain Words and Phraſes. He thinks that the Officers of the King's Houſhold, and Courts of Judicature were not ſo regulated at that Time, nor the Fees of theſe Officers ſo aſcertained as they appear to be in theſe Laws. And the Words, *Wrang* and *Unlauch*, therein-mentioned, the Author of the *Scots Hiſtorical Library*, Biſhop *Nicolſon*, thinks were not in Uſe in the Days of *Malcolm* II. Sir *Thomas Craig* ſpeaks alſo of theſe Laws of *Malcolm* II. as being authentick: But ſtill it is for proving a Point, as I juſt now obſerved, that he was very deſirous to eſtabliſh; which is the Occaſion of his giving them as Vouchers, namely, That we had the Feudal Law before the Conqueſt. Of his Opinion however is the learned *Baſnage*, in his Commentary on the Cuſtoms of *Normandy*; he takes theſe Laws which are aſcrib'd to *Malcolm* II for authentick; and upon their Authority, admits the Feudal Law to be of longer ſtanding in *Scotland*, than even in *Normandy*.

But the firſt conſiderable Body of Laws aſcribed to us, is contained in theſe Books, which, from their initial Words, are called the Books of *Regiam Majeſtatem*. In the Compiler's Preface, who ſeems to have been ſome private Man, they are ſaid to have been collected by the Order of King *David*, with the Advice and Council of the whole Realm, as well Clerks as Laicks.

That theſe Laws have been conſidered as a Part of our Law, from the Reign of *James* III. downwards to the Reign of *Charles* I. appears by ſeveral Commiſſions granted at ſundry Times, for reviſing and correcting the Laws, wherein the Books of *Regiam Majeſtatem* are always mentioned as a Part of our Law. But whither that Collection, as it ſtands, would have been ſo eſteemed, had theſe Commiſſions taken Effect, has by ſome been called in Queſtion; and particularly by our learned *Craig*, who rejects the Authority of theſe Books with great Indignation, in theſe Words, *Ut caliginem noſtratium omnium oculis & animis offuſam quaque miſere hactenus occæcati fuimus, detergam, aſſero, nihil in eis libris contineri quod ad mores noſtros, ſive uſum noſtrum forenſem conducat, neque unquam ſcriptoris illius fuiſſe inſtitutum, ut aut noſtris hominibus prodeſſet, aut leges nobis præſcriberet; autor enim eorum librorum fuit Ranulphus de Glanvilla, Comes Cæſtriæ, qui tractatum de legibus & conſuetudinibus Angliæ regnante Heurico II. edidit.*

It cannot be denied, but that there is a great Reſemblance between *Glanvill*'s Book, which begins with the Words, *Regiam poteſtatem*, and ours, which begins with theſe of *Regiam majeſtatem*; and ſo remarkable is the Reſemblance in many Reſpects, that the one ſeems to be the Copy of the other; but which is the Original, is the Queſtion? Sir *Henry Spelman*, talking of this, very modeſtly ſays, *In præfatione, diſpoſitione, canone verborum, integrorumque capitulorum textu, adeo inter*

inter ſe paſſim conſentiunt, mutatis vel aſcriptis, quæ utriuſque gentis poſtulat ratio, ut alter ex altero manifeſtè cognoſcatur deſumptus; ſed an nos Scotia Jurisprudentiam noſtram reportaverimus, judicent alii.

Some of the learned Antiquaries of our own Country, have endeavoured to prove theſe Laws to have been collected in the Time of our *David* I. And were that ſo, we ſhould have the Honour of having given a Collection of Laws to *England*: For *Glanvill*, according to Sir *Henry Spelman*, *non elatus eſt Juſtitiarius Angliæ*, was not made Lord Chief Juſtice of *England*, till the Year 1180, which was 25 Years after our King *David*'s Reign.

But I'm afraid that the Proofs of theſe Laws being collected in the Time of King *David* I. and into that Shape we now find them, are very lame; for the moſt material of the Proofs are theſe, That in the Statutes of King *William*, who began his Reign in the Year 1165, Twelve Years after the Death of King *David*; and in the Statutes of King *Alexander* his Son, ſome of the Laws of King *David*, therein referred to, are extant in the Books of *Regiam majeſtatem*.

Now, with all Submiſſion, that Argument proves no more than this, That there are of the Laws of King *David*, in that Collection, which may well be; but ſtill the Bulk of what is there preſented to us, may notwithſtanding be of a later Date.

That King *David* may have made and collected ſome excellent Laws, is not to be doubted,

from what *Buchanan* ſays of him, *Erat enim cuivis Regum in cæteris virtutibus par, audiendi vero cauſas tenuiorum facilitate longe ſuperior. Si quis judicium falſum judicaſſet, res judicatas non reſcindebat, ſed judicem litis æſtimationem cogebat victo pendere.*

A Prince ſo careful of the Adminiſtration of Juſtice, may well be thought to have enacted ſome Laws: But theſe Laws of his, which we find in the Books of *Regiam majeſtatem*, do not there appear in that ſimple and plain Dreſs, which muſt have been peculiar to his Time. The Statutes of *William* and *Alexander*, of a poſterior Date, preſerve yet a more antient Appearance than any of thoſe which are to be met with in the *Regiam majeſtatem*. When we look at the Law of Death-bed, and that of *Minor non tenetur placitare*, &c. in the Statutes of King *William*, we find in them few Words, and theſe put together in a plain and ſimple Manner, that gives an Idea of theſe antient Times: But when the ſame Laws preſent themſelves to us in the Books of *Regiam majeſtatem*, they loſe all their Plaineſs and Simplicity, and are adorned not only with more modern Terms, but in all Appearance with Foreign ones. This every Reader of any Taſte muſt needs be ſenſible of, if he does but in the leaſt compare them.

But further, we find in the *Regiam majeſtatem* a great many Paſſages borrowed from the Civil Law; and how the Civil Law ſhould have been known in *Scotland*, in the Time of King *David*, I. is beyond the Comprehenſions of every one, who

who but conſiders, that King *David* began his Reign in the Year 1124, and that it was ſeveral Years after when the Pandects being found at *Amalphi*, the Civil Law began only to be taught in the Schools of one *Irnerius* at *Bononia*: Who then can believe that *Scotland* ſhould have caught ſo many Fragments of Civil Law, as are to be found in *Regiam majeſtatem*, at a Time when it was hardly yet revived in *Italy*, after having been ſo long buried in Ruins and Deſolation, which had overſpread that Country where it had once flouriſhed.

In a Word, there needs no other Argument, than that one to prove the Laws of *Regiam majeſtatem* to have been collected ſome conſiderable Time after King *David*, when the Civil Law may reaſonably be believed to have found its Way into *Britain*: So that what is ſaid in the Compiler's Preface concerning the Order of King *David*, muſt be underſtood, with reſpect only to ſome Part of theſe Laws, which may have been King *David*'s, but can never be referred to the whole Contents of theſe Books, which muſt needs have been the Production of ſome later Age. It is not unlikely that King *David* may have made a Collection of Laws; and perhaps this very Preface may have belonged to them; and by ſome Accident became ignorantly applied to the whole Books of *Regiam majeſtatem*, tho it truly belonged only to a ſmall Part of them; for Sir *John Skeen* has not thought fit to give us any Account of the Manuſcripts from which he collected thoſe Books which he has joined together.

There

There is nothing more certain than this, that there are in theſe Books, Laws and Terms that were never known, nor made Uſe of in *Scotland*. Who is it, for Example, that has ever read in the Law of any Country, but of *England*, that ſubſequent Marriage does not legitimate the Children procreated before it? But ſuch is the Law of the *Regiam Majeſtatem*, which is a very pregnant Proof, that Part of the Contents of theſe Books is borrowed injudiciouſly from their Law: And for ought I could ever learn, there was never a Charter ſeen in *Scotland* which granted Lands to be held in Soccage; yet the *Regiam Majeſtatem* ſpeaks much of that Tenure, which indeed is well known in the *Engliſh* Law. But ſurely had any of our Lands been ever held in Soccage, or had that been a Tenure known in our Law, we ſhould have ſeen many Charters of that Character, conſidering how many of our oldeſt Charters are ſtill preſerved: For my part, I cannot well conceive what has made ſo many of our Countrymen complain of Sir *Thomas Craig*, for declaring againſt the Authority of that Book, I mean of the whole Collection as it ſtands; for in my Opinion he has done more Honour to our Law in the diſcarding from it a Collection of Laws, which he juſtly ſays, *Nunquam auctoritatem juris, vel edicto, vel principali conſtitutione, obtinuit*, never received the Sanction of the Legiſlature, than thoſe Men do who would blindly adopt them without Diſtinction upon a wild Imagination of their Antiquity, which has no Foundation.

Theſe

These Statutes, subjoined to the Books of *Regiam Majestatem*, of King *William*, *Alexander* II. *Robert* I. *David* II. *Robert* II. and *Robert* III. are the only undisputed Remains we have of any written Law before the Reign of King *James* I. and they are of little more Use now than to shew us the Sources of some few Things which are held for Law at this Day: But the Bulk of them is gone into desuetude, as are many of those Acts of our Kings which are of a much later Date.

Having thus considered the few Remains we have of any written Law preceeding the Reign of *James* I. and which for the most part are now obsolete; I come next to take a short View of the two chief Sources from which our Law has sprung, the *Feudal* and the *Civil Law*. At what Time the Feudal Law may have been introduced into *Scotland*, seems to be very uncertain: And to settle that Point, from what Helps may be gathered from History, would require more Time than I have at present to bestow upon it. Our learned *Craig* affirms, That the Feudal Law was in Use with us before it was received into *England* by the Conquest, and he thinks it likely that we had it from *France*, *Ex contracta cum Gallis amicitia & morum frequentia*, by our frequent Correspondence and Intercourse with that Nation.

It is from this Law we derive what is proper to us *in materia successionis hæreditariæ, sive in acquisitione hæreditatis novæ quam nos conquestum dicimus sive in amissione*. In matter of Succession, and in the Ways by which we either acquire the Property

Property of Lands or loſe it, which makes a great part of our Law.

It would appear that of old there was a great Penury of any written Law with us, and in that I think we have been very happy; for having no written Law of our own, beſides a few of our ancient Cuſtoms, blended with what we have got from the Feudal Law, which in part may have been reduced into Writing, we have the more naturally had Recourſe to the Civil Law; and as *Craig* ſays, *The Reaſon that the Civil Law has prevailed ſo little in* France, Germany *and* Spain, *and even in* England, *and ſo much with us, is this, That in theſe Kingdoms their Municipal Laws and Cuſtoms have been all committed to Writing; whereas with us, there being a great Penury of any written Law, we naturally in moſt Caſes follow the Civil Law.*

I conſider therefore the Civil Law, as having become for ſome Time our proper written Law; and of this we find a very particular Proof in the Chartulary of the Abbacy of *Paiſley*, in which is recorded in the Year 1234, an authentick Writing, intituled, *Litera condemnationis miſſa Alexandro Regi*, wherein are ſet forth the Proceedings of the *Decanus de Carrick & Cuningham, & Magiſter Scholarum de Air*, who had been delegated by Pope *Gregory* IX. to judge concerning the Property of the Lands of *Kilbuck*, *Inter Abbatem & Conventum de Paiſlet, & Gilbertum filium Samuelis de Renfrew laicum.* In this Letter the Judges not only acquaint the King, that they had given Judgment in this Matter, *de conſilio virorum prudentum*, &

& tam in Jure Canonico quam Civili peritorum eis aſſidentium; but it appears likewiſe that they had put their Sentence in Execution after the Form of the Civil Law, *per primum & ſecundum Decretum.*

The Churchmen were the chief Lawyers we had then, and for a long Time afterwards; and to them undoubtedly it is owing that our Law participates ſo much of the Civil Law, which they were naturally led to ſtudy, becauſe of the Connection between the Civil Law and the Canon Law, which it was ſo much their Buſineſs to know. *It is probable*, ſays Sir *Thomas Craig*, *that our old Court of Seſſion was compoſed chiefly of Eccleſiaſticks, who being well inſtructed in the Civil and Canon Laws, gave Judgment according to their Preſcripts.* And when that excellent Prince, King *James* V. inſtituted a perpetual Court of Seſſion, he did not chuſe out of the Nobility the Men of high Dignity and Honour to fill his Bench, but the Learned in both Laws, who following the *Roman* Law in their Deciſions, recommended it to Poſterity.

In thoſe early Times, not only all the Law, but all the Learning, was with the Churchmen, inſomuch that even at the Inſtitution of the College of Juſtice, the moſt part of the Judges were Eccleſiaſticks; and there is little Room to doubt, but that Churchmen being Judges, and the Civil Law being ſo nearly allied to the Canon Law, by being its Model and Pattern; the Civil Law came thus more to be made Uſe of, and in the greater

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Abundance adopted into our Law than otherwiſe it would have been.

Thus the Civil Law was at firſt introduced, and by theſe Steps it has become ſo conſiderable a Part of our Law, ſo that we not only follow its Rules and Deciſions, chiefly in what relates to Moveables, as Sir *Thomas Craig* ſays; but alſo in Pactions, Tranſactions, Reſtitutions, Arbitrations, Servitudes, Contracts of all Kinds, Evictions, Pledges, Tutories, Actions, Exceptions and Obligations. I ſay, we not only make Uſe of it in all theſe Contracts and Obligations, but by the Help of it we have given a juſt Temperament to many of the Severities and Hardſhips in the other Parts of the Law, and have made them more conformable to right Reaſon and natural Equity. Thus in many of our Deciſions, we find the Severities of Feudal Penalties juſtly mitigated, from Reaſons which the Civil Law had inſpired. *For to tell truly*, ſays Sir *Thomas Craig*, *the Civil Law is ſo diffuſed through all our Affairs, that there hardly occurs a Caſe or Queſtion wherein the great Uſe of the Civil Law does not manifeſtly appear.* Herein, I ſay, was our great Happineſs, that having no written Law of our own, we had naturally Recourſe to the Civil Law; for if, as in other Nations, our own ancient, and perhaps barbarous Laws and Cuſtoms had been committed to Writing, we had like them been tenaciouſly addicted to our own Laws, and partially fond of what had been handed down to us by our Anceſtors, we had diſdained to adopt the Laws of another Nation, how much ſoever preferable

ſerable to our own. Thus our Want of written Law was our great Felicity, and thus the Civil Law became our written Law for a Courſe of many Years.

Being therefore plentifully ſupplied from the Pandects and Code with Laws touching private Right; Our later Kings we ſee have not found it neceſſary to give us any conſiderable Number of Laws of that Character. To what other Cauſe can it be owing, that King *James* I. has given us ſo few Laws concerning private Right, but that he found his Judicatures in Poſſeſſion of ſo rich a Source of Laws, and ſo well founded on the Principles of natural Equity.

That Prince was one of the moſt accompliſhed Men in his Time, and he had the beſt Education which that Age afforded. It was natural for a Prince thus adorned to apply himſelf to the Arts of Government: And as he gave us many Laws concerning the publick Policy of the Kingdom, ſo doubtleſs he would have given us a greater Number of Laws concerning private Right, than he has done, had not the Uſe of the Civil Law, of which he found his Kingdom in Poſſeſſion, made that unneceſſary.

To the ſame Cauſe it muſt needs be owing, that in the Five following Reigns ſo few Laws were enacted concerning private Right; and this is ſo remarkable, that if we reckon the whole Laws of that Character, which are recorded among the Acts of Parliament of the firſt Five *James*'s and of Queen *Mary*, they will hardly amount to the Number

Number of one Hundred. Now if the Civil Law had not lent its Aid, it is not to be imagined but the Diſputes which muſt have happened concerning private Right, during the Courſe of ſo many Years, muſt have ſuggeſted to our Parliaments the enacting a far greater Number of Laws touching private Right, than that handful which appear among our Acts of Parliament. I conſider therefore the Civil Law as having been the Rule of Judgment in all Caſes, wherein our own particular Statutes and conſuetudinary Laws were ſilent: So that the Civil Law was in old Times our proper written Law.

In Courſe of Time as our Courts of Judicature began to flouriſh, our Law gradually received Improvements; and what we borrowed from the Civil Law, was either adopted ſimply without any Alteration, or was varied a little, according as our different Manners and Genius made an Alteration neceſſary: And that was effected, partly by Acts of Parliament touching private Right, which increaſed in Number in the Reign of *James* VI. and his Succeſſors; partly by the Deciſions of our Lords of Seſſion. And thus by Degrees our Law is become what at this Day we find it; which tho' collected originally from theſe Sources that I have deſcribed, yet is now by a long Tract of Time made the proper and peculiar Law of our Country.

Now altho' we have thus collected and adopted a proper Law of our own, which is partly written, partly conſuetudinary; yet as in the infinite Va-

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riety of Cases which daily emerge, some Questions will often occur which by no Rule in our Law can well be decided. Our Judges therefore have Recourse to the Civil Law, and are thereby so far governed, as they find the Rule of Decision therein set forth, nowise disconform and inconsistent with our own Law and Practick: And therein the Judges are well justified by several Acts of Parliament, whereby it is declared, *That the Lieges shall be governed by the King's own Laws*, [that is, our own peculiar Laws and Customs,] *and by the Common Laws of the Realm*, [that is, the Civil Law;] so that we consider the *Roman* Laws, which are not disconform to our own fixed Laws and Customs, to be our Law. For in the Reign of *James* V. we find the King's Advocate commencing an Action of Forfeiture against an Heir, for the High Treason of his Father, on no other Foundation but the Civil Law; which tho' murmured against by the Generality of the Nation as a Novelty, was yet justified by the Parliament as legal; and for no other Reason, but because it was agreeable to the *Roman* Law. And in King *James* VI. his Time, we find the Legislature, in the abrogating of some former Laws, thought it necessary to give a *non obstante* to the Civil Law, as well as to our own particular Laws and Constitutions. From all which it manifestly appears, that the Civil Law has all along been considered as our Law, and is justly made the Rule of Judgment in all Cases wherein our Law is silent; and

when ſuch Deciſions will prove nowiſe derogatory to our own proper Laws and Cuſtoms.

Having thus briefly ſurvey'd the Riſe and Progreſs of our Law, I ſhall in the next Place turn my Diſcourſe to what more immediately concerns the Work before our Hand. Some of you, *Gentlemen*, whoſe firſt Year it is to ſtudy the Municipal Law, muſt be made acquainted with the general Plan of my Prelections, to which you are altogether Strangers: To the End that you may the better enter into the Advice I am to give you concerning the Proſecution of your Studies.

And as in this Matter of Advice, after what Manner you are to ſtudy, and to make my Prelections beneficial; I muſt diſtinguiſh you, *Gentlemen*, who have done me the Honour to be the Hearers of my Prelections in former Years, from you who come new only to commence Students of the Law of your Country. I ſhall firſt therefore addreſs myſelf to you, *Gentlemen*, who are of this laſt Claſs, and who are but entring upon this Study, after I have given you a general View of my Method of prelecting.

The Text I chuſe is Sir *George Mackenzie*'s Inſtitutions, which is the moſt complete Work of its Kind of any thing which that ingenious and learned Author has left us. 'Tis wrote very much in the Spirit and Manner of a Text Book, ſhort and conciſe, and full of Matter. 'Tis plain our Author has had my Lord *Stair*'s greater Body of the Law in his Eye when he compiled this Inſtitute, and to that 'tis probably owing that the Matter is remarkably

ably more crouded in it than in any other of our Author's Performances. What is it then we do not owe, in Matter of Law, to the Labours of the Author of the Original, my Lord *Stair*, when we conſider, that even this Text-Book has ſprung out of his larger Commentary? And that without the greater Work of the one, we had not in all Probability been favoured with the leſſer Work of the other in that Perfection we find it.

As there is then in every Page almoſt of this ſhort Inſtitute, a great deal of Matter compriſed in little Room, my firſt Buſineſs will be ſhortly to give you our Author's Meaning in other Words, and a little more copiouſly than it was proper for him to do, who meant only to deliver the Elements of our Law for others to comment upon. This being done, I retouch the ſame Matters in a more formal Diſcourſe, and I add to them ſuch other Matters as are coincident with the Subject of the Paragraph I'm upon, which are to be gathered partly from my Lord *Stair*'s Inſtitutions, partly from the later Deciſions, and ſome of the other Authors upon our Law.

Theſe coincident Matters are ſuppletory to our Text, and I give you References to the moſt material of them in ſhort Notes which I dictate.

It will therefore be your Care, *Gentlemen*, to take down theſe Notes as accurately as you can, and to endeavour to make them your own; but I am not to expect that you are, during the firſt Year, to examine the Authorities to which I refer with any great meaſure of Study.

The Text, as I already obſerved, is to be your firſt Care, and you will find ſufficient Work for you at home in peruſing the Text with Application, and in conſulting the Acts of Parliament to which it refers, and in writing over your Notes fair, and entring them into a Book from the looſe Papers you make Uſe of here: Which ſecond Writing of the Notes will have its own Effect, and ſerve to imprint the Subject Matter of the Notes upon your Memory to better purpoſe than ſeveral Readings would do.

You'll carefully examine and conſider the Portion of Text which happens for the Time to be here explained to you, and by a repeated Reading you would endeavour to commit the Subject Matter thereof to your Memory as effectually as you can.

Your next Care would be to read the Acts of Parliament, which are quoted by our Author as the Authorities of what he delivers; and compare the Authorities with the Text, which will contribute to give you a right Notion of the Matter, and will help you alſo to remember it the better.

When you have thus conſidered the Text and the Acts of Parliament referred to, the next thing I recommend to you, is, to recollect theſe Matters of Law which I have diſcourſed of, that are not in the Text, by the Help of the Notes which I ſhall dictate to you. You will find for the moſt part in theſe Notes a Reference to ſome Acts of Parliament, ſome Deciſion or other Authority: Now the Acts of Parliament referred to, I would have you in all Caſes to peruſe; but I cannot adviſe

viſe you to conſult in this firſt Courſe all theſe Authorities which I ſhall cite: That would be too great a Task for you at the Beginning, and might contribute rather to perplex than to inſtruct you. It is fit however you mark all theſe Authorities with the View of being uſeful to you afterwards, and that you may have them to conſult when you come to a cloſer Study; and to do that which I ſhall juſt now propoſe to thoſe who are farther advanced.

The preſent Uſe I propoſe to you to make of theſe Notes, is to endeavour to underſtand aright what they contain, and to fix them on the Memory as well as you can; and to that End you would keep them in Order.

There is yet one thing I would particularly recommend to you, and that is to glance over, before you come hither, the Text which is to be the Subject of Diſcourſe; that will be a Help to you, and a likely Means to underſtand it the more perfectly, when you hear it explained to you in this Place: For you muſt needs the more readily follow me in diſcourſing upon theſe Matters, after you have firſt taken ſuch a View of them yourſelves, as your own reading of the Text can give you.

But you, *Gentlemen*, who are farther advanced in the Study of our Law, and who have already gone one Courſe with me, will find Subject Matter, from my *Diſcourſe*, to note an Expreſſion ſometimes which may ſerve either to enlarge or to illuſtrate the Note which you have already taken:

And while others are employed in Writing, you will perhaps find it needful to keep your Eye on your former Notes, and to correct any thing in them which perhaps through Inadvertency or Miſtake you had not well taken down; by which means you will bring your Notes to be more correct and accurate than poſſibly they are.

But when you are at home, I'm to look for a cloſer and more extenſive Application from you than from the firſt Year's Students. Your Buſineſs it ought to be to conſult the Authorities I refer you to, with Care and Exactneſs; and from thence to extend your Notes, and begin to form a Syſtem for your ſelves, which will be of the greateſt Benefit to you imaginable, and enable you to undergo a ſtricter Examination than you have yet done, or than was proper for me to put you to in my firſt College of that kind, while you was perhaps a little raw, as well as I ſomewhat unexperienced in the Matter of a ſtrict Examination: You will by ſuch Practice be enabled readily to apprehend a Caſe, when I propoſe one to you, and become ready in the Application of the Rule which decides the Queſtion.

It is to be my Care to ſet before you the Principles of our Law in as agreeable a Light, and to explain them in as diſtinct a Manner as the outmoſt Application can enable me. In digeſting with my ſelf the Method of managing this Province, I have had two Things chiefly in View: One is to aſſiſt you fully to underſtand and comprehend the Principles of our Law in their juſt Extent; And the

the other is, to furniſh you with all the Means I could think of to enable you to retain them, and to make them your own, after they are fully comprehended.

For when we conſider the Uſe of the Knowledge of Law, it is not enough in the Study thereof to know and comprehend the Rules and Principles of it; but we muſt be at Pains to fix them on the Memory: For what would it ſignify to have once comprehended aright the Import of Rules and Principles, if they are not well and diſtinctly retained, ſo as to be in a Readineſs at all Times for Uſe and Application.

There is no one Science wherein it is more neceſſary to have a ready Uſe of one's Knowledge than that of Law: For there are few Caſes which occur to us that are anywiſe involved in Circumſtances, which can either be well ſtated, or the Queſtion ariſing therefrom clearly reſolved and decided, but from a complex View of many Principles at once. For in the Application of the Principles to particular Caſes, one Principle is often limited and reſtrained, ſometimes enlarged and extended by another, according to the particular Circumſtances of the Caſe: And it is impoſſible to have this complex View of Rules and Principles, but from a diſtinct Memory of them. As there is therefore no one Science wherein it is more neceſſary to have the ready Uſe of one's Knowledge than that of the Law, ſo we ought to ſtudy it after ſuch Manner and Method as will moſt effectually commit Things to our

Memory, becauſe it is by the Memory alone we have the ready Uſe of our Knowledge.

It has for that Reaſon been always the Method of Students, eſpecially thoſe of the Law, to accompany their Reading with Writing; and without Queſtion, the taking down in Writing the Subſtance and Heads of what we gather in the Courſe of our Study, is of the greateſt Benefit; for the Action of Writing being ſlower, and thereby laying us under a Neceſſity to dwell upon the Subject, ſtamps a more laſting Impreſſion: And the abridging and preparing our Notes and Excerpts, engages us in a cloſs Attention, and proves a ſort of Teſt, by which we diſcern, if we comprehend aright what we are about; for one can never abridge, till he comprehends well. For theſe Reaſons, the Uſe of Writing in the Courſe of any Study, and eſpecially of the Law, which takes in ſo large a Field of various Matters and Things, is productive of very real and ſolid Advantages: It imprints an accurate Memory of the Matters which have been the Subject of our Study; and an accurate Memory of what we have learn'd, gives us the ready Uſe of our Knowledge: So that the beſt and cleareſt Survey of the Rules and Principles of our Law which you can take in this Place, will be of little Avail, if the ſame Things are not laboured over again by your own private Application. You are to conſider me only as an uſeful Aſſiſtant and Helper, to pave your Way, and to conduct you in a regular and conſtant Train; but it is your own Care alone that can perfect and

accompliſh.

accompliſh. You may here, I hope, lay the Foundation, and acquire a juſt Notion and Comprehenſion of Terms and Principles; but it will depend on yourſelves to acquire the uſeful Remembrance of them. All the Aſſiſtance I can give you in that Behalf, is to offer you my beſt Advice concerning the Means to acquire that uſeful Remembrance.

Our Text is to be your firſt Care. You'll in this Place, I dare hope, ſee its full Import and Meaning; but the Queſtion is, how to make it your own. The natural and ordinary Way, is frequent Peruſal of that Portion thereof, which for the Time happens to be the preſent Subject of Study. But I am ſenſible, that frequent Peruſal of ſuch a thing turns irkſome. The Imagination muſt receive ſome Entertainment from what we read, otherwiſe there enſues a Wearineſs and diſreliſh, which diſſipates the Attention, and gives to our Study the bare Form of it, without the Effect. This is a very common and natural enough Conſequence of a repeated Reading of the ſame Words, and yet a repeated Reading, or ſomewhat equivalent, is neceſſary to accompliſh our End, namely, to acquire that uſeful Remembrance which I have already deſcribed.

Give me Leave then to propoſe to you a Method, which is ſomewhat more laborious indeed, than a repeated reading of the ſame Thing, but is leſs irkſome and painful, by being more entertaining to the Imagination; and at the ſame Time extremely profitable and inſtructive; and that is, to frame

frame and compoſe gradually, as we proceed in our College, each for his own private Uſe, a ſhort Syſtem of Rules and Principles.

I am not to imagine, that one who is but juſt entring upon his Study, and to whom Matters of Law are altogether new, will be able to form any Thing of this Sort, in any tollerable Manner; and indeed I would not adviſe one, at the very Entry to graſp at more than he can well accompliſh. The Text itſelf, and the Acts of Parliament which I ſhall refer to, with the Notes which I ſhall dictate, conſidered attentively, and with Care is all the Subject of private Study, which I dare recommend to one who has never ſtudied any Law before; but thoſe who have either been ſtudying the Civil Law, or who have acquainted themſelves a little with our own, ought to carry their private Study its full Length; to conſult the other Books of our Law, and to have a View of collecting for their own particular Uſe the Flowers of their reading, and of forming them into the beſt Shape and diſpoſing them into the beſt Order they can.

But before I point out the Materials, which are to compoſe this Syſtem of private Uſe, I muſt firſt take notice to you, how eaſily theſe Flowers may be gathered, and the Aſſiſtance you may expect from me for that Purpoſe.

You will obſerve, That our Author's Manner of Writing, is not to lay down the Principles of our Law, by Way of Poſition, and in detatched Sentences, but after the Form of a continued Diſcourſe, by which he connects often in the ſame

Pa

aragraph ſeveral Matters; which, tho' bearing a atural Relation to each other, and very often a eceſſary one, yet ſtill as they are diſtinct Mat-ers, they may be ſeparated; and, for the Sake of reater Perſpicuity in the Explanation, it is fit to parate and diſtinguiſh them: Therefore, in the terpreting of our Text, I chuſe to paraphraſe very the ſmalleſt Portion of it, that comprehends Matter which will ſuffer to be viewed ſeparately om the other Matters to which it is joined, to e End that nothing in the Text may eſcape us. hus I mark out, and parcel the Contents of every ction in ſuch a Manner, that you cannot fail take Notice of every Thing that is material in and to diſcern and diſtinguiſh the eſſential Cha-ters of every Thing therein treated of. From e Text therefore, with an eaſy Application, you ay be able to extract in your own Phraſe and Ex-eſſion, the eſſential Rules and Principles; and eſe being committed to Writing, I would pro-oſe, ſhould ſerve for the firſt Materials of your ſtem.

After having paraphraſed the Text to you, I ll have Occaſion to take Notice of ſome few les, which are not to be found in the Text; eſe Rules ſometimes extend, and ſometimes li-it the Principles in our Text; and, as they oc-r, I ſhall firſt Diſcourſe of, and then dictate them you, to ſerve as another Ingredient of your ſtem.

But becauſe your Time here will not permit ch Dictating, and much of it would become te-

dious

dious to you. And whereas there are many o-
ther Matters beſides theſe Rules, which our Tex
wants, conſiſting ſometimes of practical Obſerva
tions, or concerning the Hiſtory of our Law
which will deſerve your particular Notice and Re
membrance: Therefore I purpoſe, as a Help
your Memory in that Behalf, to quote to yo
either ſome Deciſion, ſome Act of Parliament,
ſome other Authority from our Law-Books, whic
may ſerve to illuſtrate and explain the particul
Matter diſcourſed of, and from which, by co
ſulting the Books referred to, you may call
Mind, and make your own, what without the He
of ſuch Reference would eſcape you. But the
in taking down theſe References, it will always
neceſſary to ſubjoin a Word or two, to characteri
the Matter for which the Reference is made, ſo
to diſtinguiſh it; otherwiſe ſo many Reference
without a diſtinguiſhing Character to each on
would in your private Study perplex you. Wh
you gather from theſe References, will deſerve
Place in your private Syſtem, which is, you ſee,
be compoſed of the Rules of Law contained
the Text; and the Notes which you take dow
here, together with ſuch Enlargements of them
your own private Study ſhall enable you to ma
from theſe References.

The firſt Ingredient then of your private S
ſtem is to be collected from the Text.

It may appear perhaps to ſome, to be a nee
leſs and unneceſſary Trouble to excerp any Thi
from the Text.

B

But we are to consider, That when we attempt to express our Author's Meaning in a different Phrase and Manner, and thereby to make it as it were our own, we not only commit the Matters which it contains, more effectually to the Memory, but we are thereby naturally guided to a stricter Search and Enquiry into its full Meaning, by examining whether we have fully expressed it: And in this Exercise I can assure you we shall often find in our Author somewhat meant, which we should not otherwise have adverted to, if we had not attempted to express his Thoughts in our own Way.

I do not mean, that you are to excerp the Matters in the Text in their very Words, but that you should collect them in your own Words, at least give them a different Cast, and mould them into another Shape; for the great Benefit which I propose you are to reap, will arise from the Study, to express what our Author delivers in a Manner different from what he has done, taking Care always to miss nothing that is Material; for in that Case you will find two Advantages, namely, Comprehending fully, and remembring distinctly.

'Tis impossible for me to suggest to you any particular Directions how you may accomplish what I am now proposing. One must be governed therein as his own Fancy and Judgement directs him: For all the Help another can possibly give in a Matter of this Sort, is to point in the General at what may be done, and the Use of it,

but

but the Manner and Way of Execution muſt b
left entirely to one's ſelf.

The Way in general by which I conceive yo
may beſt accompliſh this Part of your Study
which relates to the Text, is ;

Firſt, To obſerve in each Paragraph how fa
the Subject-Matter thereof can be branched ou
into two or more diſtinct Particulars.

The firſt Thing you are to obſerve in each Pa
ragraph, is, how many Particulars the Subject
Matter thereof will bear to be divided into : An
the next is, To form theſe Particulars into ſo ma
ny ſeparate and diſtinct Articles. The fewe
Words the Articles are conceived in, the better
providing that nothing of the Matter is loſt
When you have thus converted a Portion of th
Text into Articles, you are next to ſubjoin th
Notes I give you in their proper Places, as addi
tional Articles. Your laſt Care is, to add to a
what further Enlargements you ſhall gather from
the Authorities which the Notes refer to, or which
you may collect from my Diſcourſe on the Subject
Matter of theſe Notes.

This leads me to take Notice, That ſome of you
Gentlemen, who have already taken down th
Notes which I dictate, with Exactneſs ; and wh
have them in Order, need not to write them her
over again : But you may perhaps make it a Que
ſtion how you ſhall be uſefully imployed here dur
ing thoſe Intervals, wherein others are employe
in writing theſe Notes ? And my Anſwer to tha
is, That you may take the Opportunity of noting
what

what occurs to your ſelf from my Diſcourſe, and Explanation of theſe Matters, which may enable you when you are at home, to make ſome proper Enlargements of your Notes, and help to make out your Syſtem. Your previous Knowledge of the Subject will naturally induce an Attention to what is any Thing particular and material in my Diſcourſe; and therefore, when I come to the dictating of a Note, you will have Reſpite enough, to take a Note in your own Way, of what you thus gather from my Diſcourſe, which, I ſay, may ſerve to enlarge your Syſtem; and to give you a more thorough Underſtanding of the Matter than you have yet conceived: For you will find in the Progreſs of this ſecond Courſe of Study, that there are many Things which will now brighten up to you, of which at firſt you conceived but an imperfect Notion. When therefore you happen to hear any Thing which ſerves to clear up the Matter you had formerly noted, you cannot be better imployed than in marking it.

This Method of private Study may appear perhaps to you to be ſomewhat laborious; but I can aſſure you, on the other Hand, it is profitable and infinitely more agreeable and entertaining than mere reading without collecting. The moſt Part of thoſe who have ſtudied any Science with Application, will agree in this, That it is worth the Pains to take Notes of our Reading, altho' we ſhould never look on them afterwards.

I affirm then, That this Method of Studying is the moſt entertaining, and the moſt inſtructive.

It

It is laborious indeed; but that we muſt lay our Account with in the Acquiſition of any Thing. The preſent Senſe of doing what is fit for us, and the future Proſpect of acquiring an uſeful Knowledge muſt ſweeten the Labour; but this is certain, That the more diſinclined a Man finds himſelf to Study, the more Reaſon he has to follow this Method, becauſe it induces a cloſer Attention; for while we are ſtudying how to collect properly, and to form a good deal of Subſtance into a ſhort Note; we are more intereſted; we have a much greater Share in the Scene of Action, than if we had nothing in View, but barely to read, and that certainly entertains the Imagination better, keeps it cloſer at Work, engages a firmer Attention, and thereby diverts Wearyneſs. Let the Opinion of the Labour which attends this Study, be loſt in the Conſideration that it is to be made eaſy, by being gradual, and to be perfected by being regular and conſtant. I muſt not omit to take Notice of one Thing, which is likely to happen ſometimes, and to guard you againſt the Miſchiefs that attend it.

In the Purſuit of this Method of Study, you may happen to fall in Arrear with your Task, thro' Avocations, which ſometimes are unavoidable; and being perhaps ſcared at the Bulk of it, and that this Arrear cannot be overtaken in your preſent Courſe, you may encline to take the common Remedy, and to give up your Method altogether, I will therefore here give you a ſeaſonable Precaution.

When

When you happen to fall a little Backward, never mind what is paſt, ſo as to divert you from what is preſent: Be ſure always in the firſt Place to mind the Buſineſs of the Day, and let Arrears only be your ſecond Care. If your Blanks are too numerous for you, let them ſo ſtand till the Courſe is over, and take them up with your Convenience; for which I ſhall readily give you my Aſſiſtance at any Time.

I cannot make an End of this Diſcourſe, without obſerving to you how much both you and I are indebted to the Man who laid the firſt Foundation of reducing our municipal Law into a Syſtem, by the Help whereof, its Profeſſors are rendered better able to teach, and its Students to learn, than it was poſſible for either to have done in the former Age. To the immortal Praiſe therefore of the learned Sir *Thomas Craig* of *Riccarton* be it recorded, That of theſe Syſtems which we now enjoy, he laid the firſt Foundations, in his elaborate and univerſally eſteem'd Treatiſe of Feus.

Before that Book ſaw the Light, the Students of our Municipal Law wandered in Darkneſs and Obſcurity, in Search of a Knowledge that was not then attainable, with any tolerable Meaſure of Eaſe or Certainty.

The Difficulties which then attended the Study of our Law, are well ſet forth and deſcribed in the Publiſher's Preface of that admirable Treatiſe; and it is therein we may ſee how much we are indebted to that great and learned Author, not leſs

conſpicuous for his Learning and Judgment, that for his exemplary Piety and Virtue.

Before we were made happy in the Enjoyment of that Treatiſe, the Candidates for the Bar, under the utmoſt Uncertainty what Courſe to ſteer, and what Method to follow for attaining the Knowledge of the Law of their Country, had no Manner of Help whereby to guide them in the Proſecution of their Studies, and to point them towards the right End, but what was to be gathered in Scrapes, from an Attendance at the Bar, or upon the Conſultations of Lawyers, who often under the ſame Uncertainty, what was the Law, could but ill give ſuch Reſponſes, as were fit to be made the firſt Elements of a Science for thoſe who wanted to be initiated: So that the ſame Knowledge which now with moderate Application may be accompliſhed in the Courſe of a few Years, was then hardly to be attained in an Age, and but in an imperfect Manner. In thoſe Days all our Municipal Law conſiſted either of Acts of Parliament or of the Deciſions of the Lords of Seſſion; for the Books of *Regiam majeſtatem*, and the other Treatiſes joined thereto by Sir *John Skeen*, had never received the Sanction of the Legiſlature; and if they had even been made Uſe of as our Law were for the moſt Part gone into Deſuetude.

Even our Acts of Parliament lay then buried among our other antient Records, till they were publiſhed firſt in a black Character by one *Lekprevick*, and afterwards by Sir *John Skeen*, of which even the Copies became ſo rare, that ſoon after

after their Publication, they were not to be purchaſed but with the greateſt Difficulty: Nor were theſe a great Help to the Students; for many of them had gone into Deſuetude, and but a few concerned private Right. The Deciſions of the Lords of Seſſion would have contributed more to that End, if they could have then been purchaſed as they may now; but theſe partly lay hid in the Libraries of a few, and partly were various and uncertain, ſubject to Alteration at the Will of the Judges.

Such was the State of our Law, and ſuch the unhappy Condition of its Students, when firſt Sir *Thomas Craig* like another *Juſtinian* (to uſe the Words of the Publiſher of his Book) *Lucem è tenebris eruit, & ſub nomine* trium librorum de feudis, *totum jus Scoticum complexus eſt, & omnes ferè materias juris, clarè, dilucidè & diſtinctè exponit, & ad fontes Juris Civilis & Feudalis omnia ducit; Jus Anglicum frequenter, Jus Gallicum non rarò adjungit; ita ut paucæ ſint in Europa gentes, ubi jus Civile & Feudale viget, quibus non ſit futurus utilis hic liber.*

It is with great Pleaſure, *Gentlemen*, I obſerve to, That many of you have attended my laſt Years Prelections with ſome Punctuality; and I do aſſure you, that I look upon the Aſſiduity of any one who has done me the Honour to be my Hearer, as a Reward that gives me infinitely more Delight than any Thing elſe given me under that Name, can poſſibly do; for I have but little Satisfaction, if you will believe me, in the Enjoyment

of an Honorary, which is not followed with ſom Reaſonable Meaſure of Application of the Perſo who gives it.

I hope I need not recommend it to you, to fo low out with your own Application what you hav here laid the Foundation of: All that was in m Power, was only to conduct you; but it is you own Endeavours at home that muſt do the Worl and bring it to its proper Bearing.

Such of you, *Gentlemen*, who purpoſe to tak Charge of the Management of other Mens Buſi neſs, cannot but ſee the Indiſpenſible Neceſſity making your ſelf fit to go through the Affair which ſhall be committed to you, with Credit an Reputation. I need no other Argument to re commend Aſſiduity to you; for ſure I am, that Argument does not of it ſelf ſpeak forcibl enough, all I can ſay beſides will be to little Pu poſe.

Such of you, *Gentlemen*, on the other Hand wh don't mean to ſtudy our Law in the View of con ducting other Mens Concerns, may yet find goo Reaſon to purſue the Study with Application, fo the better Adminiſtration of your own. But be ſides, *Gentlemen*, you will conſider what an Orna ment it is to know the Law of your Country Is there any Thing more frequently the Subject o Converſation, or which bears a greater Part in i than the Caſes that daily occur in Law? Doe not the Intereſt often of the Parties, ſo extenſive ly ſhed its Influences, as to induce all within th Sphere of their Relation or Acquaintance, an

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even within the Reach of their Reputation and Name, if they are Parties of Diſtinction, more or leſs to take Part in their Succeſs or Diſappointment? Have we not often ſeen Subjects of that Kind enhance the Converſation of the whole Country for a whole Seaſon, while Caſes of leſſer Note and Figure having ſtill an Effect of the like kind, enhance the Converſation of a particular Corner and Neighbourhood; and, on theſe Occaſions, is it not a Mark of Diſtinction for a Gentleman to be able to acquit himſelf tolerably?

Do we not ſee the moſt Part of the polite World, embelliſh their Converſation from a Knowledge of Hiſtory, and the *Belles Lettres*? Are not Ornaments for Converſation, as uſeful as well as entertaining to be gathered from the living Law of a Country, and with leſs Hazard of Pedantry? Let us but conſider then the Knowledge of our Law, as the proper Embelliſhment of a Gentleman, without Regard to the uſeful Part; and does it not even in that abſtracted Light deſerve your Application?

But when we conſider it as an uſeful Ornament, pray, *Gentlemen*, what more agreeable Perſonage can one form to himſelf, than that of a Country Gentleman, living decently and frugally on his Fortune, and compoſing all the Differences within the Sphere of his Activity, giving the Law to a whole Neighbourhood, and they gratefully ſubmitting to it.

FINIS.

AN
Alphabetical Index
AND
ABRIDGMENT
OF THE
Printed ACTS of *Sederunt*
OF THE
Lords of Council and Seſſion,
From June 1661, to January 1726.

EDINBURGH:
Printed by Mr. THOMAS RUDDIMAN, 1726.

A N

Alphabetical Index

AND

Abridgement of the printed Acts of Sederunt *of the Lords of Council and Seſſion*, &c.

A.

Acts.

THAT no Act nor Decreet, either in Inner or Outer-houſe, be extracted, till Twenty four Hours elapſe after reading thereof, in the Minute-book. *January* 20. 1671.

After an Act before Anſwer is extracted, no proponing of Alledgeances competent and omitted; and the ſame Terms to be granted in ſuch Acts as Purſuers ordinarily get in others; and if the Relevancy of ſome Points be determined, that the Party bur-

burdened with Probation, have the ſame Terms as are allowed them *reſpectivè* in Acts of *Litis-conteſtation*; and after Concluſion of ſuch Probation, no other Point in the Act can be proven; and if, before Anſwer, the Term be circumduced for not Production againſt Writs founded on, the Alledgeance or Reply in ſuch Caſes, ſhall be holden as not proponed.

July 23. 1674.

Acts once warrantably extracted, are not to be altered on Supplication, ſeeing before Extract, the other Party may get a Scroll thereof.

February 24. 1680.

Acts ordaining Depoſitions to be taken on the Quantities, before Rights of Competitors are diſcuſſed, diſcharged, and all ſuch Acts already extracted, diſcharged to come in amongſt concluded Cauſes, but remitted to the Ordinary to determine in the Competition. The Act proceeds on a Narrative, That that Practice was a great Hinderance to conclude Cauſes, and Probation before Relevancy, contrary to the Form of Proceſs.

Fully 15. 1692.

Adjudication.

Decreets of Adjudication, on Production of the Writs by the Debitor, and Probation of the Rental, ought to be for the principal Sum, Annualrents thereof, and a Fifth more, without the Penalty of the Bond; but when the Decreet is only in Abſence of the Debitor, without Probation of the Rental, the ſame ſhould be for the principal Sum, Annualrents and Penalty, if any be in the Writ adjudged on: And ſuch Decreets in Abſence of the Debitor, without Probation of the Rental, and adjudging the Debitor's Eſtate, without Reſtriction, if extracted for a Fifth more attour the Principal, Annualrents and Penalty, to be null in Time coming.

26. *February* 1684.

And the 9th of *December* 1681, *Geddie* againſt *Telfer*, the Lords would not accumulate Annualrent on Annualrent, where the Adjudication was ſpecial, and extracted for a Fifth more.

That

That no Writer to the Signet, ſhall write, form, or give out any Summons of Adjudication founded upon a ſpecial Charge to enter Heir, until the Forty Days mentioned in the Execution of the ſpecial Charge, be fully elapſed and expired.

Feb. 18. 1721.

That a principal ſigned Abbreviate of Adjudication, when given in to the Clerk of the Bills to be recorded, ſhall be retained by the ſaid Clerk, to be the Warrant of poſterior Extracts. And for the Adjudgers further Satisfaction and Security, the Judge, Pronouncer of the Decreet, may ſign two or more Abbreviats for the Parties Uſe, if he ſhall deſire it.

January 18. 1715.

Advocation, *ſee* Suſpenſion.

That Advocations or Suſpenſions of Cauſes for keeping Conventicles, be only paſt by the Lords in Preſence, in Time of Seſſion, or three Lords in Time of Vacance, and on Conſignation.

June 24. 1673.

Advocates.

That all Advocates admitted ſince the Year 1648, or to be admitted in Time coming, and all Expectants, pay to the Advocates Box, the Advocate 20 Merks, and the Expectant 10 Merks, Horning on ſix Days to paſs therefore, on a ſubſcribed Roll by the Theaſurer; and no Suſpenſion thereof but on Conſignation.

Feb. 28. 1662.

Recommend to all Intrant Advocates, to contribute liberally and voluntarily for a Library to be erected for the Uſe of the College of Juſtice.

Feb. 7. 1679.

Act ratifying an Act of the Faculty of Advocates, augmenting the Dues on Intrant Advocates, by Examination, to 500 Merks; and thoſe who enter by Bill, without Examination, to 1000 Merks, and the Failziers to be debar'd their Office. The ſaid Augmentation is for maintaining a Library, and a Profeſſor of Law; with Power to the Lords to modify the ſame as they ſhall ſee Cauſe.

January 28. 1684.

That

That all Advocates entring by Bill, without undergoing the ordinary Trial by Examination, ſhall be examined by the Lords *in præſentia*, in their Knowledge of Stiles, Form of Proceſs, and Principles of our Law; and that the Lords be informed of their honeſt Deportment.

July 6. 1688.

But this extraordinary Way by Bill, is not to be granted to a Couſin-German, or any nearer by Affinity or Conſanguinity to any of the Lords.

Novem. 24. 1691.

The Lords will admit no Advocate the extraordinary Way, but whom they know to be honeſt, and fit for that Office, and who has attended the Houſe a conſiderable Time for qualifying himſelf; and thereon they will remit him to the Dean of Faculty with a Certificate of his Conſignation of the ordinary Dues, and that tho' he hath not ſtudied the *Roman* Civil Law. And the Lords Couſin-Germans and others debarred from this Act as before.

June 25. 1692.

That each Advocate have but one Servant. *Feb.* 26. 1678.

That all Advocates imployed in one Cauſe, meet, and conſult jointly, that they may adviſe how to carry on the Proceſs unanimouſly, and that the ſame be not refuſed on any perſonal or other quarrel amongſt Advocates, under the Pain of Deprivation.

June 7. 1677.

If at Calling againſt more Defenders, the Clerk mark one Advocate indefinitely, and he return the Proceſs without qualifying his Compearance, he is to be repute Compearer for all the Defenders.

Novem. 25. 1680.

That in Proceſs againſt Debitors, where an Advocate compears for any of them, for whom he returned not the Proceſs, he ſhall not propone a Defence, till he mark and ſubſcribe with his Hand, That he compears for that Perſon, conform to the Act of Parliament.

Decem. 10. 1687.

Ad

Advocates or Writers Servants, ſigning their Maſters Names to Petitions, Outgivings or Returns of Proceſſes, or Bills of Suſpenſion, or other Bills, which their Maſters uſe to draw, declared puniſhable, as Falſars and Forgers.

Feb. 7. 1679.

Agent *ſee* Clerk.

Aliment.

No Aliment to be granted to Perſons on Pretext they have a depending Action, unleſs it clearly appear that there will be a free Superplus to that Party at the Event of the Proceſs; and in Caſe of Competition of real Rights, that no Aliment be granted till a Decreet of Preference be obtained, unleſs there appear a clear Fund out of which it may be granted, without Prejudice to any of the Competitors. *Item*, That no Aliment be granted to Perſons having Right to a Reverſion or Property after the Diſtreſſes are purged, unleſs it appears that there is an Overplus Rent over and above the Annualrents of the Competitors.

July 31. 1690.

Annualrent.

That Factors named by the Lords, ſhall be liable for Annualrent, for what Rents they recover, or by Diligence might recover within a Year after the ſame are due.

Ibidem.

Anſwers to Bills of Suſpenſion, *ſee* Suſpenſion.

Appeal.

Appeal by the Marquis of *Huntly*'s Managers when Abroad, diſclaimed by himſelf. *Jan.* 1675.

Appearand Heir.

If appearand Heirs grant Bonds whereon Adjudication or Apprifing of their Predeceſſor's Eſtate follow for their Behoof, or if the

the ſame come in their Perſons, either before or after the Expiring of the Legal, they ſhall be liable to their Predeceſſor's Creditors.

Arreſtments, *ſee* Poinding.

Aviſandum, *ſee* Proceſs.

****

B.

Bankrupt.

THat all Charges to put Bankrupts at Liberty, contain this Proviſion, That they go out of Priſon betwixt 9 and 12 of the Clock before Noon, with their upper Cloaths, the Half yellow, and the other brown; and that they ſhall be impriſonable when they want it off.

January 23. 1673.

Creditors preferred to the Price of Bankrupts Lands, ſhall diſpone their Rights and Diligences to the Purchaſer, with Warrandice *quoad* the Sums received; and, in Caſe of Eviction, they are to refound the Sum paid them, effeiring to the Eviction, and their ſaid Sum with Annualrent thereof, from the Date of the Sentence, Intimation being always made to the Creditors of the Proceſs of Eviction before *Litis-conteſtation* thereintil; and this declared to be the Import of Warrandices preceeding the Act.

March 13. 1685.

Proceſs for ſelling Bankrupts Eſtates, to have ſummar Diſpatch, as other Adjudications (Sales are to be now by Adjudication, *W. and M. Parl. Seſſ.* 2. *Act* 20.) and tho' taken up to be ſeen, Terms ſhall be granted for proving the Rental, and that the Purſuer prove that there are Adjudications and other real Rights affecting the Lands, exceeding the Value, if the Defender deny he is a notour Bankrupt; and that the ſame Term be aſſigned for proving the Rental, and other real Creditors are to be admitted

to

to concur and prove the Rental, that the ſaid ſummar Proceſs be not hindred.

Feb. 24. 1692.

That the Clerks of Seſſion keep a ſeparate Regiſter, for regiſtrating Diſpoſitions of Bankrupts Eſtates made by Perſons ordained by the Lords to ſell the ſame, conform to the Act of Parliament 1681, with a Minute-book relating thereto.

January 10. 1685.

Proceſſes of Sale of Bankrupts Lands and Eſtates, ſhall be raiſed and carried on, and the Decreet thereupon ſhall be expede in the Manner directed by Nine ſeveral Articles in the Act.

Novem 23. 1711.

Bar.

The Macers diſcharged to let any Perſon within the Bar of the Inner-houſe, or innermoſt Bar of the Outer-houſe, during the Time the Lords or Ordinary are there, ſave in the Outer-houſe, the Keeper of the Minute-book, King's Solicitor, and one Servant of the King's Advocate, under the Pain of Impriſonment to the Party Offender, and Deprivation to the Macer negligent. *July* 22. 1665. And that theſe who go within the ſaid Inner-bar of the Outer-houſe be fined in 3 *lib. Scots*; and the Macer negligent to execute this Act, to pay the ſame himſelf, and be impriſoned during Pleaſure.

Novem. 3. 1671.

That the Macers on their Peril let none come within the Bar of the Inner-houſe, when Cauſes are debating, ſave the Lord Advocate, Clerks of Seſſion, and of the Bills, and one Macer, and the Lord Treaſurer and his Deput, or Commiſſioners of the Treaſury, while the King's Cauſes are debating.

Decem. 16. 1686.

That Perſons, other than the Lord Advocate, Solicitor and Advocate's Servant, going within the Inner-bar of the Outer-houſe, where the Clerks and Keeper of the Minute-book ſtay, be fined

ed in Half a Dolar to the Poor's Box, and the Macers negligent or ſparing, to pay the ſame themſelves.

Novem. 6. 1690.

That none, ſave Advocates and Writers to the Signet, go within the Advocates Bar in the Outer-houſe, under the Pain of Deprivation to the Bar-keeper. The Act is extended to Noblemen and thoſe who have been formerly Senators of the College of Juſtice.

Feb. 1702.

Side-Bar.

Several Orders concerning the Side-bar, and the Manner of the Lords hearing Cauſes thereat, *November* 4. 1686. *January* 16. 1690, and *June* 10. 1691. But this Bar wholly taken away and that no Party be obliged to anſwer or attend thereat; and to ſupply the Want of the ſaid Side-bar, that no Acts be called on *Saturday* before Noon, but that the Ordinary put a Period to ſuch Cauſes, the ſaid Forenoon, as have been called the preceeding Days of that Week, by Courſe of the Roll, and nothing done thereintil. Regulations of the Seſſion, Article 13. *Anno* 1695. To prevent all Side-bar Callings, of which there is no previous Advertiſement to the Advocates concerned, by Rolls put upon the Wall the Night before; That the Lords ſhall ſtrictly keep to their Side-bar Hours; and that the Keepers of the Rolls for the Outter-houſe, ſhall affix upon the Wall weekly, each *Monday* the particular Days, Hours, and Names of the Lords that are to be Ordinaries at the Side-bar that Week. This Act, after ſome other Regulations concerning the Side-bar, ordains, That any verbal Stop ſhall have no Effect to hinder the Decreet from going out. And ordains all written Stops to be ſubjoined to the Representations craving the ſame; and ſhall not continue in Force above a Fortnight in Seſſion Time; and if granted in Vacance ſhall not endure after the Eight Day of the next Seſſion, except the ſaids Stops be renewed.

11. *November* 1708.

Bill and Bills of Suſpenſion, *ſee* Suſpenſion

No Bill to be received for ſtopping or altering of concluded Cauſes, nor Decreet or Interlocutor thereon, at adviſing thereof unleſ

unleſs the ſame be preſented within two Days after pronouncing.

Novem. 9. 1677.

The Clerks diſcharged to give up Bills whereon there are Deliverances relating to Interlocutors or Decreets, except where the ſame is appointed to be ſeen and anſwered.

July 23. 1678.

That all Bills reclaiming againſt Interlocutors in Preſence, ſhall be offered within Six *Sederunt* Days after pronouncing the Interlocutor reclaimed againſt, and that more than two reclaiming Bills from the ſame Party, after their firſt Bill againſt the Interlocutor in Preſence, ſhall be received and admitted.

July 9. 1709.

That none of the Clerks ſhall receive more reclaiming Bills againſt any Interlocutor in Preſence than one, unleſs upon new Matter of Fact, and ſufficient Evidences given, that it is recently come to the Parties Knowledge.

Novem. 26. 1718.

That all Petitions, Anſwers, Informations, ſhall bear an Advocate's Name ſubjoined thereto, who ſhall be conſidered as the Drawer, and anſwerable for what is therein contained; and that all reclaiming Bills have the Date when given in, and bear the Date of the Interlocutor reclaimed againſt.

Decem. 19. 1710.

Summons of *Bonorum*, *ſee* Proceſs.

After calling of Summons of *Bonorum*, tho' there be no Comparance, yet the ſame ſhall be enrolled in the next Weeks Roll for the Outer-houſe, and a Roll of the Creditors conveened in that Proceſs, to be affixed on the Wall of the Outer-houſe, and that it be ſpecially libelled and inſtructed how the Purſuer became *lapſus*.

Decem. 1. 1685.

Boxes, *ſee* Informations.

C.

Macers Caption, *ſee* Proceſs.

Cauſes, and Cauſes concluded, *ſee* Bills.

That the ordinary Lords, *per vices*, weekly meet in the Parliament Houſe, on *Tueſday*, *Thurſday* and *Friday* in the Afternoon, from Three to Five Hours at Night, for hearing of Parties on concluded Cauſes, and make Report in Writ of the Probation, and mark the particular Points of the Oaths and Writs inſiſted on for either Party, that the ſame being prepared, may be adviſed in the Terms of the Act of Parliament.

Novem. 1. 1693.

Cauſes delete, *ſee* Inrollment.

Juratory Caution, *ſee* Suſpenſion.

Ceſs, *ſee* Lords.

Charger, *ſee* Suſpenſion.

Citydale of *Leith*.

Act ordaining the Perſons therein named, to adviſe how far the 6000 *lib. Sterling* for buying to the Town of *Edinburgh* the Citydale of *Leith*, being a Burgh of Regality, may be uplifted out of the Chamber of Impoſition. *Sept.* 8. 1663.

Clerk, *ſee* Regiſtration.

That there be only three Clerks of Seſſion, and theſe to be nominate by the Lords, and to have Deputations from the Lord Regiſter; and if his Office be vacant, to act by Warrant of the Lords, *June* 20. 1676. But this Act altered; and that the ſaids Clerks be nominate by the preſent Lord Regiſter, any Thing in the ſaid Act notwithſtanding.

June 8. 1680.

That

That the Clerks to the Seſſion cauſe their Servants in their reſpective Offices, give Bond, that during their Service they ſhall not agent in Proceſſes for either Party, under the Pain of 100 Merks *toties quoties*, to be diſpoſed of at the Sight of the Lords; and that the ſaid Bond be taken of all Servants in Time coming, at their Entry, and recommended to the Clerk Regiſter, to ſee this Act kept *.

Novem. 28. 1682.

That each principal Clerk of Seſſion, ſhall have a Box for receiving Bills and Informations, that the Clerks may be duly appriſed of the Bills and Anſwers which they are to move, or of the Cauſes which are to be reported.

July 1. 1709.

That Letters of Horning, on 15 Days, be directed againſt the former Clerks to the Bills or their Repreſentatives, charging them to deliver to the preſent Clerk to the ſaid Office, what Money has been conſigned in that Office, and not given up, as the ſame are marked in the Records of the Bill Chamber.

Decem. 22. 1683.

The Clerk to the Bills declared liable to Parties Damages, as well when he refuſeth a ſufficient Cautioner, or holden and repute ſuch, as when he receives an inſufficient Cautioner.

Feb. 18. 1686.

That all Clerks of Shires, Stewartries or Bailliaries, before they enter to exerce, be preſented to the Lords of Seſſion, to be approven by them, conform to the 78. *Act. Parl.* 5. *Ja.* V.

July. 28. 1680.

College of Juſtice.

Act declaring the Members of the College of Juſtice free from Payment of the Annuity for the Miniſters Stipends in *Edinburgh*, Watching, Warding, Cuſtomes, Cauſey-Mails, Shoar-Dues, and Impoſitions on Meat and Drink for their Families, and Goods carried to and from the Town of *Edinburgh*, and collected

* *See an Exception of this Act in* D.

any where within the Liberties thereof; and Certificates of Goods belonging to them, to be renewed once in the Half Year at leaſt: And alſo, That they are free of the Civil Juriſdiction of the Town; and for the Criminal, the Lords will make Enquiry anent the former Cuſtom, and when a ſpecial Stent is impoſed, whereto the Members foreſaid ſhall be liable, that to the End the Stent may be laid on equally, an Advocate or Writer to the Signet is to meet with the Stent Maſters of each Quarter, for valuing the Tenements within Burgh; which Valuation the Magiſtrates are to intimate to the Preſident, Dean of Faculty, and Keeper of the Signet, Ten Days before, in Time of Seſſion, and Twenty in Time of Vacance. And the Members, of the College of Juſtice declared to be the Lords of Seſſion, Advocates, Clerks of Seſſion and Bills, Writers to the Signet, Under-Clerks, and one Subſtitute, for regiſtrating in each Clerks Office; the three Deputes of the Clerks to the Bills, Clerks of Exchequer, Directors of the Chancery, their Deput, and two Clerks thereof, the Writer to the Privy Seal and his Deput, Clerks to the general Regiſters of Saſines and Hornings, Macers of the Seſſion, Keeper of the Minute-Book, Keeper of the Rolls of the Inner and Outer-houſes. And the ſaids Privileges are extended alſo to one Servant of each Lord, and each Advocate, Four Extracters in each of the three Clerks Chambers, Two Servants employed by the Clerk Regiſter in keeping the publick Regiſters; and the Keepers of the Seſſion-Houſe and of the Advocates Library. But theſe laſt Perſons to whom the Act is extended, keeping Shops, Merchandizing or exercing any other Trade within Burgh, forfeit the Benefit of the Act. The Act is a Decreet of Declarator againſt the Town of *Edinburgh*.

Feb. 23. 1687.

Commiſſar Clerk, *ſee* Teſtament.

That when Perſons are examined on Commiſſion, there be paid to the Under-Clerks half Dues, *viz.* A Merk for each Party, and half a Merk for ilk Witneſs, and that at the Return of the Report, and before *Aviſandum* be put up in the Minute-book.

Novem. 17. 1685.

Commiſſion, *ſee* Minute-book, and the very preceeding Act and Macers.

Com-

Commiſſions ordained to be granted to Debitors, ſick, or out of the Country, for deponing, in the Terms of the Act 12. *July* 1661, to be reported betwixt and the of *November* next.

July 31. 1661.

Commiſſion for granting Infeftments, *ſee* Infeftments.

Compearance, *ſee* Advocates.

Competition, *ſee* Acts.

Compt and Reckoning.

That for the more ſpeedy Diſpatch of Proceſſes of Compt and Reckonings they ſhall be inrolled in the Regulation-Roll, the Accomptant or Defender ſhall give in a Charge againſt himſelf, Diſcharge and Inſtructions thereof; Auditors thereof ſhall be appointed, and the whole Accompts with the Writs and Inſtructions produced, ſhall be fitted and prepared for the Ordinary, according to the Direction of the five firſt Articles of the Act.

Novem. 22. 1711.

Confirmation.

That all the Creditors of deceaſed Perſons uſing Diligence within Half a Year of the Defunct's Death, by Citation of his Executors confirmed, or Intromitters with his Goods, or by confirming Executors Creditors, or citing other Executors confirmed; the ſaids Executors uſing any ſuch Diligence within the ſaid Time, are to come in *pari paſſu*, the Poſterior paying to the Executor Creditor firſt confirmed his Expences proportionally with his Sums purſued for.

Feb. 28. 1662.

Conſent, *ſee* Regiſtration.

Copies, *ſee* Interlocutors *and* Suſpenſions.

Creditors *see* Confirmation.

Curators.

The Clauſe in the Act of Parliament anent Tutors and Curators, who make no Inventary, their being debarred of Expences, declared to extend to all Expences wared out by them on Purſuits and Diligences, tho' neceſſarily and profitably for whatſomever Cauſe, except the Expences of Entertainment of Pupils and Minors, or on their Houſes and Eſtates.

Feb. 25. 1693.

D.

Damage, *see* Clerk.

Death-bed, *see* Kirk.

Deciſions.

The printing and publiſhing of *Stair's* Deciſions approven of by the Lords, and Thanks rendred to him therefore.

June 10. 1681.

Declinator, *see* Solicitation.

When the Ordinary is relevantly declined, or ſhall decline himſelf; on Application of the Party, or Deſire of the Ordinary, the Lords will appoint one of their Number to hear that Cauſe the ſame Week. *Decem.* 14. 1689.

Decreet, *see* Acts and Macers.

That no Member of, nor any depending on the College of Juſtice, Adviſe, ſpeak or ſuggeſt any Manner of Way, in Publick or

or private, what imports injuſtice in the Lords Decreets and Sentences, under the Pain of Excluſion from their Offices, and that it be included in their Oath *de fideli*, taken at their Admiſſion; and that theſe who have been the Occaſion of this Act, diſown their Proteſtations under the ſaid Penalty; and all other Members obliged to give their Oath for the Diſcovery thereof. The Act is extended to all other Subjects, impowering the Lords to Warrants to apprehend them.

June 17. 1674.

The Act is a Letter from the King.

That with booked Decreets of Regiſtration, the principal Writs decerned to be regiſtrate, be alſo kept.

Novem. 21. 1676.

That Decreets be not ſcored out of the Minute-book for not Payment of the Macers, and Minute book Keeper's Dues; but that the Collector of the Clerks own Dues uplift theſe alſo, and compt to them conform to the Reſponde-book, which is to mention the Date of the Decreet extracted, as it ſtands in the Minute-book.

June 30. 1687.

But now Decreets are not to be extracted till a Certificate be produced under the Hand of the Keeper of the Minute-book, that he has got Payment of his own and the Macers Dues therefore; and the Extracter contraveening, to be extruded; and the Clerks ordained to make patent their Reſponde-books to the Macers, and Keepers of the Minute-book.

December 31. 1690.

When Decreets are put up in the Minute-book, the ſame ſhall expreſs the Names of all the Defenders, otherwiſe to be null, as to thoſe not inſert, except in Actions of Mails and Duties, Removings and Poindings of the Ground againſt Tenants; but if any of the Defenders called, or a third Party propone on his Right, and Decreet be given againſt them, their Names ſhall be put up in the Minute-book.

Decem. 10. 1687.

That Miniſters get Letters of Horning againſt their Pariſhioners, on their preſenting a Decreet of Locality obtained by their Predeceſſors, with their own Preſentation, Collation and Inſtitution, and that without Neceſſity of obtaining a Decreet, conform as Uſe was formerly.

June 22. 1687.

Act ratifying former Acts anent ſtopping of Decreets, Acts and Interlocutors, *&c.* and declaring no Stop ſhall be granted after ſix Days from the Date of the pronouncing, and the ſame only to endure till the firſt Diet the Ordinary have for hearing thereof; and that at craving the ſaid Stop, a written Condeſcendence be given in, of the Grounds whereon the Stop is craved, that the other Party may ſee the ſame; and that there be alſo given in an Amand for the Poor's Box, if the Interlocutor hath been diſingenuouſly miſrepreſented; and Lords and Clerks Servants diſcharged to deliver Informations or agent, except in their own or their Maſters Cauſes, under the Pain of Extruſion of the Houſe, and further Puniſhment, as the Lords ſhall ſee Cauſe.

Novem. 7. 1690.

Defender, *ſee* Compearance and Decreet.

Defunct, *ſee* Inventary.

Deleting, *ſee* Proceſs and Purſuer.

Diſpenſation.

Diſpenſations to inferior Courts in Time of Vacance, ſhall only be in Time coming till the 20th of *Auguſt* and *March reſpective*.

July 21. 1696.

Diſpoſition, *ſee* Bankrupt.

Dues, *ſee* Suſpenſion, Clerks and Macers.

Dyvour, *ſee* Bankrupt and Proceſs of *Bonorum*.

E-

E.

Edict and Eik, *see* Teſtament.

Edinburgh.

ACT impowering the Magiſtrates of *Edinburgh*, for cleanſing the Town of Filth and Beggars, to lay on a Stent of 500 *lib. Sterling* yearly, for three Years after *Candlemas* 1687, to be paid by the whole Inhabitants in the Town, *Canongate* and Suburbs, according to the Rent of the Houſes poſſeſt by them; and that this Stent ſuffice, and that the Magiſtrates be liable to cleanſe the Town and Suburbs therefore, as the Lords ſhall ordain in all Time coming; and the Members of the College of Juſtice ſubject themſelves to this Act, notwithſtanding of their Privileges.

January 29. 1687.

Equivalent.

That all Arreſtments and Intimations of Aſſignations of the Equivalent, ſhall be laid on and made in the Hands of the Commiſſioners conveened in their ordinary Meeting, or during the Intervals of their Meetings at the Office of Equivalent, on every lawful Day, betwixt the Hours of 9 and 12 before Noon, and 2 and 6 in the Afternoon, *Saturdays* Afternoons excepted. But if at theſe Times there ſhall neither be a Commiſſioner to receive Copies of the ſaid Arreſtments, nor the ſaid Intimations; nor any of their Clerks, authoriſed for that Effect, attending at the ſaid Office; or if the Doors of the Office ſhall be found ſhut; then it ſhall be lawful to make the Arreſtments and Intimations foreſaid, at the Door of the ſaid Office, and leave and affix Copies thereon, in due and legal Manner as accords.

June 21. 1707.

Executors, *see* Creditors.

Executors Creditors obliged to do Diligence as other Executors for what they confirm, and they are only obliged to confirm ſo much as will pay themſelves, leaving the reſt to an Executor *ad omiſſa*, who is to be liable to all Parties as principal Executors

tors. And Executors Creditors deponing they doubt of the Verity, Exiſtency, or Probation of any Debt, to have Licences to be returned when the Commiſſar thinks fit, and on Caution to confirm, as in Caſe of Licences formerly.

Feb. 7. 1679.

Exhibition, *ſee* Oath.

Expences, *ſee* Curator.

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F.

Factors.

THat Factors upon ſequeſtrated Eſtates, ſhall make and produce Rentals of the Eſtate, and give yearly in a Scheme of their Accompts, Charge and Diſcharge to the Clerk of the Proceſs, according to the Direction of the five laſt Articles of the Act.

Novem. 22. 1711.

That Writers and other Dependants upon the Seſſion, ſhall not be capable of being named Factors upon Bankrupt Eſtates by the Lords of Seſſion, notwithſtanding they ſhould impetrate the Conſent of the Creditors; and any Factory extracted contrary to the Direction of this Act ſhall be void and null, without Prejudice to the Creditors to call theſe Factors and their Cautioners to accompt as if they were lawfully appointed.

Novem. 23. 1710.

Factors, *ſee* Annualrent.

That no Factor or Tackſman of ſequeſtrated Eſtates, either by themſelves, or by interpoſed Perſons for their Behoof, ſhall tranſact or compone Debts affecting the ſame; and that if ſuch Purchaſes or Tranſactions are made, contrary to the Direction of this Act, they ſhall be held as equivalent to a Renunciation or Diſcharge of the Debts, ſo as to disburden and free the Debitor and Lands of the ſame. *Decem.* 25. 1708.

Fiars.

Fiars.

That Sheriffs and their Deputies ſhall determine and fix the fiar Prices of each Kind of Victual of the Product of their Sheriffdom, upon the Verdict of an Inqueſt, which ſhall conſiſt of fifteen, whereof Eight ſhall be Heritors, proceeding upon the Teſtimony of proper Witneſſes, to be ſummoned to the ſame Time and Place to which the Inqueſt is called, or other good Evidence adduced, or according to their own proper Knowledge of the Prices.

Decem. 21. 1723.

Fleſh.

All Perſons whatſomever allowed to ſell Fleſh, and Butcher-Beef, in the Fleſh Markets of *Edinburgh* on *Tueſday*, *Thurſday* and *Saturday*, and that as freely as any Fleſher Burgeſs of the ſaid Burgh. The Act is in Purſuance of the 122. *Act*, *Parl.* 7. *J.* V.

Feb. 17. 1682.

Fowl.

The Magiſtrates of *Edinburgh* impowered to exact the Oaths of Poultry-men and Inkeepers, anent their contraveening the Acts anent the Price of Fowls.

Jan. 15. 1669.

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G.

General Letters, *ſee* Letters.

Gratis Warrants, *ſee* Warrants.

Ha-

H.

Habite, *see* Lords, Dyvours, and Bankrupts

Hearings.

WHen new Hearings are procured betwixt 8 and 9 in the Morning, if the Procurers Procurators be abſent, the Lords ſhall notwithſtanding proceed to act or decree, and the Cauſe is not to be heard thereafter. And if the other Parties Advocates be abſent, that Parties Procurators are not thereafter to be heard, till they give in two Dollars to the Poor's Box.

July 11. 1673.

Horning, *see* Regiſtration.

That all Hornings and Inhibitions, which have been omitted to be booked the Time of the Uſurpers, be now booked.

January 3. 1679.

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I.

Commiſſion for Infeftments.

WHere Commiſſions are granted to Sheriffs in that Part for giving Infeftment, That the Warrant by the Lords to the Director of the Chancery bear, That before expeding the Commiſſion, Caution be found to the Lord Treaſurer or Treaſurer Deput, That the Sheriff in that Part ſhall be comptable for the retoured Duties; and that the ſame be atteſted by one of the Clerks of the Exchequer, and that the Director record the Commiſſion in the Books of the Chancery.

January 20. 1683.

Infor-

Informations, *ſee* Solicitation.

Printers diſcharged to receive in, or print any Informations or ther Papers relating to Proceſſes or Interlocutors or Decreets in heſe Proceſſes, without ſpecial Warrant from the Lords.

January 2. 1685.

All Acts againſt Solicitation renewed, and for preventing thereof, that each Lord have a Box, with a Slit on its Top, which hall ſtand on a Bank in the Parliament-houſe, from Three to even at Night, and thereintil ſhall be put all Informations, Bills, nſwers, *&c.* and that each Lord keep the Key thereof himſelf; nd receiving in of Informations otherwiſe, to be holden Soliitation, except in the Lord Reporter, who may receive the ſame om the Clerk with the Proceſs; and that the Reporter give in Note to the Boxes the Night before, of the Cauſes he is to reort next Day, that the Lords read not more Informations than hall be needful, either Party oft delaying till they ſee others Inormations.

Novem. 29. 1690.

That for the Summer Seſſion 1691, the Boxes ſtand in the Parament-houſe, only till Six at Night.

June 2. 1691.

The Lords will not regard Matters of Fact in Bills and Inforations, except the Propoſer inſtruct the ſame by Writs marked n the Margin, and related thereto, or offer to prove the Alidgeance, that the ſame be ſet down in large Characters, and bear e Point for or againſt which they are propoſed; and that nohing be inſert but in Relation to the Points in the Minute of iſpute; and that the Anſwers be in the ſame Order as the Alidgeances are in the Minutes.

Feb. 6. 1692.

Lords and Clerks Servants diſcharged to agent, or deliver Informations, except in their own or their Maſter's Cauſes, under e Pain of Extruſion out of the Parliament Houſe, and further unifhment as the Lords ſhall ſee Cauſe.

Novem. 7. 1690.

In-

Inhibition, *ſee* Horning.

That Creditors uſing Inhibition againſt their Debitors infeft Wadſet or Annualrent, if they make Intimation by Inſtrume to the Perſons having Right of Reverſion, that the Wadſetter Annualrenter ſtands inhibite at their Inſtance, and produce Preſence of the Party and Notar, the Inhibition duly regiſtra In that Caſe the Lords will not ſuſtain Renunciations and Gra of Redemption, unleſs the ſame proceed by Proceſs, where the Inhibitor muſt be called.

February 19. 1680.

Inner-houſe Bar, *ſee* Bar.

Inner-houſe Roll, *ſee* Roll.

Inrollment, *ſee* Roll.

Inſtructions by the King to the Commiſſar

1. You are to decide in Cauſes concerning Benefices, Tei Scandal, Confirmations of Teſtaments; all Cauſes teſtamenta and all Cauſes wherein Oath is required, if the ſame exceed 40 *Lib.* and in all other Cauſes where Parties ſubmit themſel to your Juriſdiction.

2. In Actions of Declarator of Nullity of Marriage, Divorce Baſtardy, or Adherence, where the ſame has any Connecti with the Lawfulneſs of Marriage or Adultery; all which belo to the Commiſſars of *Edinburgh privativè:* But when the A herence is purſued on Account of malicious Deſertion only, a when there is no Queſtion of the Nullity or Lawfulneſs of t Marriage, the inferior Commiſſars may decide.

3. That in Proceſſes for *res leves*, not exceeding 40 *L.* the be two Diets of Citation; and the Defender's Oath, if inſtant offered, ſhall be taken. If the Defender deſire to ſee, a ſhort Ti ſhall be given. If the Claim be referred to his Oath, and he appe not, to be warned *pro tertio*, and cited perſonally, or to be h den as confeſt. If the Claim be ſmall, and neither referred Oath, nor inſtantly verified, he is to get a ſhort Time to anſw *verbo*; and if conveened as repreſenting any other Perſon as E ecut

tutor, Intromitter, *&c.* you are to aſſign a Term to qualify, and ve in his Defences in Write.

4. The ſame Method muſt be obſerved *in arduis*; and that the ſpute be in Write, as the Difficulty of the Caſe requires.

5. The Clerk ſhall have one Book for all the ordinary Dyets d Acts; and another for Acts of *Litis conteſtation*, wherein all be ſummarly ſet down the Subſtance of the Libels, Alledgeces and *Litis-conteſtation* thereon; which Record ſhall be ſufient, without Neceſſity of either Extract or Regiſter, or exacting an Act of *Litis-conteſtation ad longum*, except the Parties ire a long Extract of the ſame.

6. That your Clerks keep a Regiſter of all Decreets, and t thoſe within 40 *lib.* be curtly recorded.

7. After *Litis conteſtation* the Party cannot paſs from his Comarance, but all ſuch Acts and Decreets ſhall be *parte comparente*.

8. That your Summons be execute by a ſufficient Man bere two Witneſſes, and queſtioning the ſame ſhall not ſtop e principal Cauſe; and if any of your Executions be found lſe and improven, the Contrivers and Abettors thereof, deending on your Court, ſhall be declared uncapable of Truſt ereafter, and further puniſhed, according to their Acceſſion ereto.

9. You may ſummon Witneſſes to compear under ſuch pecuial Fines as you think fit; and on Contempt, your Officers are uplift theſe Fines and poind therefore, the Half thereof to your wn Uſe, and the other to the poor; and to fine them in greater ms on the ſecond Summons, or to raiſe Letters of Horning, as u ſhall think fit, and that you be ſtill preſent at examining of itneſſes.

10. Your Procurators ſhall not perſiſt to make frivolous Alegeances under Pain of Deprivation.

11. At adviſing, you are not to conſult, or ſuffer any Procurr to be preſent.

12. You ſhall decern liberal Expences, and ordain Execution erefore, as for the principal Sum.

13. You may direct your Precepts to your own Officers, Meſngers, or any other Officers in your Bounds; and, on their Deforcement, you may judge thereon and inflict the ordinary Puiſhment of Deforcers, excepting Eſcheat, which muſt be ſued r before the Judge competent.

14. If temporal Judges cognoſce in Cauſes belonging to you, ou may direct Precepts inhibiting them.

15. If

15. You ſhall give forth Inhibition of great and ſmall Teind on Sight of the Parties Title allenarly.

16. If Reduction be intented before the Commiſſars of *Edinburgh*, of any of your Decreets, you may not the leſs cauſe your Sentence be execute; and if not purſued within Year and Day the Party being of Age, and in the Kingdom, your Decreet ſtand unreduceable.

17. You and your Clerk muſt live within your Commiſſariot under Pain of Deprivation, except on grave Occaſions you have Liberty from the Biſhop.

18. You ſhall have a Regiſter of all the Teſtaments you confirm, and ſhall yearly give authentick Doubles thereof to the Biſhop.

19. The Clerk at compting on the Firſt of *May* and *November* yearly, ſhall depone to the Biſhop, That all the Teſtaments confirmed are booked in the Books then produced.

20. You ſhall give forth no Precepts in Matters above 40 *lib.* till the Decreet be extracted.

21. On your being ſick or declined, the Biſhop is to depute another in your Room.

22. You muſt find Caution to compear the firſt of *May* and *November* yearly, and compt with the Biſhop or his Quote-maſter for the Quote and Contribution-money to the Commiſſars of *Edinburgh*, under the Pain of 500 *lib. toties quoties.*

23. If your Clerk confirm Teſtaments, which are not booked and compted for to the Biſhop, your Office vaiks *ipſo facto.*

24. Your Biſhops Licence muſt be had to admit Procurators who, with your ſelves, are to wear Gowns; but you may create your own Officers.

25. That the Profits of Summonſes, Sentences, and other Writs, with the Seal and Signet, two Parts thereof be the Commiſſars, and the Third the Clerks, he furniſhing Paper, Wax, Ink and Chamber.

The Orders to be obſerved in Confirmation of Teſtaments follow immediately in the Books of *Sederunt*; and alſo Inſtructions to the Commiſſar Clerks; both which ſee in TESTAMENT.

Inſtrument, *ſee* **Notars, Suſpenſion and Kirk.**

Inter-

Interlocutor, *see* Bills and Petition.

Acts, Decreets or Proteſtations, their Warrants ſhall be ſigned by the Ordinary, ere he go off the Bench, and Interlocutors on Debate that Day, or the next thereafter, except theſe pronounced on *Friday* or *Saturday*, on *Monday* thereafter at fartheſt; otherwiſe the ſame ſhall not be ſigned, but the Proceſs entred of new in the Books of Inrollment; and the Lords are to attend from Six to Seven at Night for ſigning the ſaid Interlocutors.

Decem. 13. 1690.

That the laſt Week's Ordinary come to the Outer-houſe, from Nine, till the Ordinary come out the following Week, and hear Cauſes wherein he hath given Interlocutor. See the Act in LORDS.

November 4. 1686.

To prevent Confuſion at the Side-bar, the Ordinary, after his Week is ended, will ſit in the Outer-houſe the Week following, Half an Hour before the Bell ring, till the Ordinary that Week come out to alter Interlocutors on Alledgeances to be given in in Write, which is to be put in the Clerks Hands, that the other Party may have a Copy thereof.

July 7. 1691.

The Lords will admit of no Bills for altering any Interlocutor, or the State of the Proceſs, without producing with the Bill, the Proceſs, or at leaſt the Copy of the laſt Interlocutor, under the Hands of the Clerks or Servants that wrote thereon; and the Clerks of the Outer-houſe ordained to give Copies of Interlocutors, within 24 Hours after pronouncing thereof.

Novem. 13. 1691.

That all Interlocutors pronounced by the Ordinary in Abſence, be ſigned the ſame Day they are pronounced; and that Interlocutors, Acts, Decreets and Proteſtations pronounced upon Debate, be ſigned by the Ordinary, within Six Days after pronouncing, otherwiſe to be void and null: And diſcharges all Interlocutors to be ſubſcribed after the riſing of the Seſſion. That all Acts, Decreets and Proteſtations be put up in the Minute book of the Date they are ſigned; and that no reclaiming Bill offered

to the whole Lords againſt the Interlocutor of the Ordinary, ſhall contain any new Alledgeance in Law or Fact, not inſiſted in before the Ordinary; nor ſhall they be received, unleſs preſented within Eight *Sederunt* Days after ſubſcribing the Interlocutor.

July 8. 1709.

Inventar, *ſee* Curator.

The neareſt Relations on Father or Mothers Side, or either of them, who are preſent at the Death of their Friends, ſo ſoon as they become *moribundi*, ordained to lock the Places where their Writs, Money, and other precious Moveables are, and to ſeal the Keys, and deliver the ſame to the next Judge ordinary, until it appear that there is no Nomination of Tutory by the Defunct out of theſe Places; and that then the neareſt of Kin inſpect theſe Places for that Effect, and proceed no further but for finding the ſame, and thereafter that all be cloſed up, and the Keys ſealed; and that Intimation be made to the Tutors nominate, that they make Inventary conform to the Act of Parliament; and if the apparent Heir be no Pupil but Minor, that the Keys be ſealed as before, and nothing opened till the Minor, or ſome authoriſed, be preſent; and, if Need be, the Relict or Children of the Defunct, at Sight of the Judge Ordinary, or Juſtice of Peace, may take out as much of the Money lying by the Defunct, on their Receipt, as will bury him. And when any Perſon dies out of his own Houſe, that the Maſter or Miſtreſs where he is, ſeal his Keys, Money, *&c.* as aforeſaid, until the neareſt Relation be acquainted; and, if the Keys, *&c.* be in the Hands of the Defunct's Wife, or others in the Family, that they give up the ſame to be ſealed. And declared, That the ſaids Perſons neglecting to obſerve this Act, ſhall be holden embezelers of the Defunct's Writs, Money, Moveables, *&c.* conform to the Act of Parliament, *Ch.* II. *Parl.* 2. *Seſſ.* 3. *Act.* 2.

Feb. 23. 1692.

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K.

Keeper of the Rolls, *ſee* Rolls.

Kirk

Kirk and Market.

WHERE a Writ is quarrelled as done *in lecto*, and it is proven that the Party was ſick before the ſigning thereof, the Lords will not ſuſtain the going to Kirk and Market, unleſs it be in the Day-Time, and when there was a Convocation in the Kirk or Kirk-yard for ſome Civil or Eccleſiaſtick End, or when People are gathered together in publick Market; and that all Inſtruments for that End expreſly bear, That it was taken in the Audience and View of the People gathered together as aforeſaid, otherwiſe the Lords will not regard the ſame.

Feb. 29. 1692.

L.

Latin, *ſee* Writs.

Leſſons.

AN Act of *Sederunt*, *Anno* 1650, diſcharging Leſſons by young Gentlemen for Proof of their Literature, at any Time of Seſſion, when the ſame may be prejudicial to the Adminiſtration of Juſtice, renewed, and alſo diſcharging the ſame, the laſt Month of the Seſſion.

Novem. 28. 1661.

General Letters.

General Letters to paſs at the Lords Inſtances for the Contribution due to them, out of the Prelacies of the Kingdom. The Act preſcribes the Manner of Execution againſt the Biſhops, Abbots, *&c.* liable.

Novem. 17. 1668.

All general Letters diſcharged, except on a Decreet conform, for the King's Cuſtoms, Rents and Caſualities, or for Contribu-

tion-Money due to the Lords, or ſuch as are expreſly warranted by Acts of Parliament.

June 8. 1665.

That all Letters paſſing the Signet (except Summonſes) exceeding one Sheet, be ſigned by the Writer to the Signet, on the Margin, at the Juncture of the Sheets.

July 8. 1691.

Liberty and Liberation, *ſee* Priſon and Dyvour.

That no Charge to ſet at Liberty, be paſt on juratory Caution.

Novem. 8. 1682.

Lord, and Lords of Seſſion.

That the Fifeteen ordinary Lords of Seſſion, wear the ordinary Habite and Robes of ordinary Lords of Seſſion, without Reſpect to their Dignity or Quality.

June 5. 1661.

That any Intrant Lord of Seſſion before he be admitted, ſit three Days with the Ordinary in the Outer-houſe, and report to the Lords the Points of any Proceſs taken to Interlocutor; and alſo, that he ſit one Day in the Inner-houſe; and after Diſpute is brought to a Period before Interlocutor, he reſume the Caſe, and firſt give his Opinion.

July ult. 1674.

The Lords of Seſſion diſcharged of the current Supply. The Act is a Letter from the King.

July 19. 1671.

The Lords diſcharged of all Taxes, and Supplies to be impoſed in Time coming, by either Parliament or Convention. This Act proceeds on a Letter from the King, which, with the Act, is recorded in the Books of *Sederunt.*

Novem. 19. 1684.

That

That for preventing Confuſion at the Side-bar, the Lord Ordinary come out to the Outer-houſe, on the following Week, and Half an Hour before the Bell ring, till the Ordinary next Week come out; and, on Application, alter Interlocutors as he thinks fit. Se this Act in INTERLOCUTORS, *July* 7. 1691, and another alſo to the ſame Purpoſe, *Novem.* 4. 1686. whereby it is further ſtatute, That the Application for reverſing Interlocutors, ſhall be within a Week after they are pronounced, otherwiſe the Parties are left to reduce or ſuſpend as accords.

Several Regulations are appointed to oblige the Lords to give due and punctual Attendance every *Sederunt* in Time of Seſſion, and alſo in their Turns, in the Time of Vacance, by the Forfeiture of certain Sums in the reſpective Caſes mentioned in the Act.

Decem. 25. 1708.

That the Lord, who is next to be in the Outer-houſe, ſhall be Ordinary on the Bills, and that the Lord who was Ordinary in the Outer-houſe the Week immediately preceeding, ſhall be upon the concluded Cauſes; and that the two Lords, who in Seniority are next and immediately before the Ordinary on the concluded Cauſes, ſhall be Ordinary on the Oaths of Witneſſes.

June 5. 1711.

That for the more ready and eaſy Adminiſtration of Juſtice, the 17 Articles of Regulation be obſerved, as directed by an Act of the 20. *November* 1711.

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M.

Macers.

THAT the Macers to the Seſſion have half Dues for the Oaths of Perſons examined on Commiſſion, *viz.* 12 *s. Scots* for each Party, and 6 *s.* 8 *d.* for ilk Witneſs, and the ſame to be collected by the Keeper of the Minute-book.

Feb. 5. 1681.

Magiſtrates, *ſee* Priſoners.

Market, *ſee* Kirk.

Minor, *ſee* Curator.

Minute-book, *ſee* Act and Decreet.

The Minute-book ordained to be read on the Advocates Servants, their Loft.

Novem. 3. 1671.

That there be paid to the Keeper of the Minute-book 4 *ſhil. Scots* inſtead of the two Shillings formerly paid for each Cauſe that is enrolled.

June 6. 1663.

That all Keepers of Regiſters of Saſines, Reverſions, Inhibitions, Hornings, &c. for the Security of Purchaſers, ſhall immediately after receiving in of the ſaids Writs, make a Minute thereof in a Book, to be ſigned by the ſeveral Preſenters; and the ſaids Books are to be made up by the ſeveral Regiſters, from and after a ſhort Day in the Act, under the Pain of Deprivation, and the Damage to the Party; and that no Blank be left in the ſaid Book.

July 15. 1692.

N.

Notars.

THAT Letters on Six Days, be direct at the Clerk-Regiſter's Inſtance or his Depute, to the Admiſſion of Notars, charging the Relict, Executors, and Cautioners of Notars, to bring in and Deliver to them, the Protocols of deceaſt Notars, conform to the Acts of Parliament; and alſo charging Notars who have informal

informal or defective Protocols, to produce them at the Head Burgh of the Shire, before the ſaid Deput; and when Cautioners are inſufficient, to renew the ſame; and that general Letters be direct for that End, on a Liſt ſubſcribed by the Lord Regiſter; and that Notars admitted in the Uſurpers Time, admit of new; and that all Perſons hereafter, who ſhall be admitted to Sheriff, Stewart, Bailliary, and Regality Clerkſhips, before they enter to exerce, be preſented to the Lords, and examined by them, conform to the 78. *Act. Parl.* 5. *Ja.* V.

July 29. 1680.

Notars diſcharged to ſubſcribe for Perſons who cannot write, except he know the Perſon deſigned in the Writ, or that the ſame be atteſted by theſe who ſubſcribe Witneſſes to the Notar's Subſcription; or by other credible Perſons, which the Notar is to mention when he ſubſcribes for the Party.

July 21. 1688.

That none be admitted Notar, but on a Petition given in to the whole Lords in Preſence, with a Certificate ſubſcribed by credible Perſons, That the Petitioner is of good Fame, and has had good Breeding, for qualifying him to exerce that Truſt: And that the Ordinary on the Bills, and other Lord Examinator being met together, take exact Trial of the Perſon's Knowledge and Qualifications before he be admitted.

July 30. 1691.

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O.

Oath in a *Bonorum*.

THAT in Proceſs of *Bonorum*, the Purſuer depone if he hath any Lands, Heritage, Sums of Money or Goods, more than is contained in his Diſpoſition and Inventary in Proceſs; if ſince his Impriſonment he hath made any other Diſpoſition than that produced, or if he made any before his Impriſonment, and that he condeſcend on the ſame, if any be; or if ſince his Impriſonment he hath put out of his Hands any Goods, Gear, or Money

belonging to him: And if the Purſuer deny, and his Oath be redargued, his Decreet of *Bonorum* ſhall be null, and he ſhall never get another thereafter, *February* 8. 1688.

And further, That the ſaid Purſuer depone if he hath cancelled & put out of his Hands any Writs ſince his Impriſonment, and that he condeſcend thereon if he be guilty.

July 18. 1691.

Oath of Calumny.

That the ordinary Terms of an Oath of Calumny, if the Party has Reaſon to deny or alledge the Points whereon he is required to depone, are ambiguous; and that hereafter when a Party ſeeks an Oath of Calumny on an Alledgeance found relevant, the other be interrogate, whether he does not know the ſame to be true? And if the Party againſt whom any Point or Alledgeance is to be proven, require the Oath of Calumny of the other proponing the ſame, that he be enquired whether he knows the Thing that he propoſeth is not true? And a Party is not obliged to give an Oath of Calumny *in facto proprio & recenti*, that being an Oath of Verity.

January 13. 1692.

Oath in Exhibition.

That in Exhibitions Parties may not only be interrogate if they have or had the Writs in Queſtion, ſince the Citation, or fraudfully put them away at any Time; but alſo, that they ſhall anſwer all ſpecial pertinent Interrogators, in Relation to their having or putting the Writs away, or as to their Knowledge and Suſpicion by whom they were taken away, or where they are now; and that notwithſtanding the Party ſhall not be decerned againſt, unleſs it be found he had the ſame ſince the Citation, or fraudfully put them away at any Time.

February 22. 1688.

Oath in a Suſpenſion, *ſee* Suſpenſion.

Oath in Writ.

The giving in of Oaths in Writ diſcharged, but that the Party depone on the Points of the Act, and ſuch Interrogators relative thereto, as the Ordinary ſhall find pertinent.

July 15. 1692.

Ordinary, *ſee* Lord, Cauſes and Interlocutors.

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P.

Parliament-houſe, *ſee* Seſſion.

Penſion.

THE Lords Sallaries and King's Penſions are not arreſtable; ſo decided as to Servants Fees, *Feb.* 18. 1662. This Act is not amongſt the printed Acts, but is mentioned in *Stairs* Inſtitutions, *Book* 2. *Tit.* 5. *Par. ult.* *June* 11. 1613.

Bills craving Warrant to the Directors of the Chancery to iſſue out Precepts to grant Infeftment on Retours, on the Sheriff's Refuſal to infeft, ſhall only be paſt by the Lords in Preſence, and the Director diſcharged to direct Precepts to Sheriffs in that Part, except the Bill be paſt, as ſaid is.

Feb. 15. 1678.

Petition, *ſee* Interlocutor, Act, Information, and *gratis* Warrant.

The Clerks diſcharged to read any Petition relating to Interlocutors in the Outer-houſe, except the ſame bear, that the Ordinary on Amand refuſed the Lords Anſwer.

Novem. 4. 1686.

Poinding

Poinding.

That the Lords will receive all double Poindings for purging Arreſtments as incident Proceſſes, with the principal Cauſe, without any new Enrollment.

Feb. 1. 1677.

Preparing, *ſee* concluded Cauſes.

Printing, *ſee* Informations.

Priſon.

That Magiſtrates of Burghs permit none to go out of their Priſons without Warrant from the Lords of Seſſion, or Privy Council, except in the Caſe of Sickneſs and extreme Danger of Life atteſted on Oath, and under the Hand of a Phyſician, Chirurgeon and Miniſter of the Goſpel in the Place; which Teſtificate ſhall be recorded in the Town Books; and that the Magiſtrate allow the Party only Liberty to abide in ſome Houſe within the Town during his Sickneſs, they being always anſwerable that the Party eſcape not; and, on his Recovery, to return to Priſon, otherwiſe the ſaids Magiſtrates to be liable for the Debt impriſoned for.

June 14. 1671.

That Magiſtrates or Jaylors liberate Perſons, on Production of a ſufficient Diſcharge of the Debt or Debts impriſoned for, if the ſame exceed not 200 Merks, and that without Neceſſity of Suſpenſion and Liberation, the ſaid Diſcharge being always regiſtrate, and an Extract thereof left in the Jaylor or Magiſtrates Hands; and providing the ſame alſo conſent to the Debitor's Liberation.

Feb. 5. 1675.

That Suſpenſion and Liberation be not granted, unleſs the Procurer produce at the Bill Chamber, an Inſtrument of Intimation to the Creditor perſonally, or at his Dwelling-place, if within the Kingdom, mentioning, That on a particular Day, or within the Latitude of a Week of the Time condeſcended on, he was about

bout to apply for Liberation; and if the Week after that Day on hich he was to apply is expired, the Intimation muſt be renewed.

July 21. 1675.

That no Charge to ſet at Liberty be paſt on juratory Caution.

Novem. 8. 1682.

Privileged Summons, *ſee* Summons.

Prizes.

That the Lords conclude on ſuch Orders as ſhall be neceſſary or bringing before them, and deciding Cauſes concerning Prizes n a ſummar Way; in reſpect the Perſons for the moſt Part con-erned, are Strangers: And the Subjects of *Spain* and *Sweden* are articularly recommended. The Act is the King's Letter.

January 3. 1667.

That the Treaty of *Breda* is void by the War, and no Ally an claim any Benefit thereby, when they carry Counterband, or ave Goods of the Enemies on Board; and that any Number of *Dutchmen* being on Board, be not a Ground of Confiſcation, as n the laſt War, but only if any Part of the Ship belong to any nhabitant within the Dominions of the States-General, the whole hip and Cargo is then to be declared Prize; and if the Maſter reſide in *Holland*, the Lords are to judge as they ſhall think ac-ording to Law. This Act is a Letter from the Secretary.

July 8. 1673.

Proceſſes.

That for the better and further regulating of Proceſſes, and for the greater Diſpatch of Buſineſs, by fixing and aſcertaining the Diets of hearing and adviſing of Cauſes, *Friday* Forenoon be ſet apart for adviſing Bills without Anſwers, and Bills and An-ſwers formerly given in, but remaining unadviſed; and that there be no Reports upon the ſaid Forenoons, except by particular Ap-pointment: And that all the Ordinaries, except for the Outer-houſe, ſhall aſſiſt at the Adviſing of the ſaid Cauſes: And that *Saturday* be wholly imployed in diſcuſſing the Rolls of ſuch Cauſes as are appropriated for that Day, excepting always Bills of Courſe

Courſe, or upon extraordinary Emergent. That no reclaiming Bill againſt an Interlocutor *in præſentia*, condemning in, or aſſoilzieing from Expences be allowed, and only one reclaiming Bill againſt ſuch Interlocutor of an Ordinary. That all Parties or their Advocates ſhall be obliged to confeſs or deny the Facts alledged againſt them, which might be admitted to Probation, to the End, that if it ſhall appear after Probation, that the Facts were known to him, he ſhould pay all the Expences, without any Modification, or Caution to the other Party, by his calumnious Denial; and that in all Decreets to be extracted, the Facts founded upon, not expreſly denied, ſhall be held as acknowledged; and to which, Want of Proof ſhall never be allowed to be objected. That no Prorogations after extracted Acts ſhall hereafter be granted, without Expences to be modified for the Party's Damage.

Feb. 1. 1715.

That after the firſt Calling, which is to be markt by the Under-Clerk on the Summons, within Year and Day of the laſt Day of Compearance, it ſhall not be lawful to the ſaid Clerks to mark any other *partibus* on the ſaid Summons, until the ſame be given out, ſeen and returned; and come in by Courſe of the Roll to be judicially called before an Ordinary, and that thereafter all Callings or *Partibus*'s to be markt on the ſaid Proceſs, ſhall be ſigned by the Ordinary.

Feb. 26. 1718.

That the laſt Nine *Sederunt* Days of the Winter Seſſion, and the laſt Seven *Sederunt* Days of the Summer Seſſion, ſhall be employed in finiſhing Proceſſes formerly commenced; and therefore prohibites, during the ſaid Days, all Side-bars, except for the Uſe of the Ordinary on the Bills. And reſtricts the Outer-houſe's weekly Rolls, to Acts, and the Regulation Roll: And that during the laſt Four *Sederunt* Days of the Winter Seſſion, and the laſt two Days of the Summer Seſſion, no Ordinary ſhall go to the Outer-houſe, except for calling the ſaid Acts and Regulation Roll. That the Purſuers of Reductions, or Reductions and Improbations, ſhall not hereafter be obliged to ſeek the Authors of the Defenders leaving it to the Defenders to ſeek their own Authors, or to intimate to them their Diſtreſs, as they think fit: And that in all Proceſſes of Transferring, it ſhall be ſufficient for the Purſuer, without ſpecially libelling the whole Procedure of the original Pro-

Proceſs, to libel his active Title, and the paſſive Title againſt the Defender, with the Concluſion of the original Summons.

Feb. 16. 1723.

Proceſs, *ſee* Reporting.

That Defenders get no Sight of Proceſs in the Summer Seſſion, which hath been ſeen by them in the Winter, except there be material Ammendments made of the Summons or new Pieces produced.

Novem. 8. 1665.

That after Diſpute in a Cauſe, and *Aviſandum* made to the Lords, the Clerk ſhall that Day carry the Proceſs to the Ordinary, that he may peruſe the ſame, in Order to report the Points taken to Interlocutor. That no part of a Proceſs be lent up to Parties or others after *Aviſdandum* therein.

June 2. 1675.

That the Clerks give up Proceſſes to none but to Advocates and their Servants.

Feb. 26. 1678.

That Macers detain Perſons complained on for not reproducing of Proceſſes, not only till the Proceſs be reproduced, but until they ſatisfy the Macer for executing the Warrant for apprehending them; and the Complainer declared free of any ſuch Expence.

Novem. 11. 1691.

Proceſs of *Bonorum*, *ſee Bonorum*, and Oath therein.

That when Proceſſes of *Bonorum* are kept up, Decreet be not pronounced, but the Purſuer complain to the Lords *in præſentia*, in common Form.

Novem. 6. 1666.

That no Proceſs of *Bonorum* be granted, but on Certificate by a Magiſtrate, That the Purſuer has lyen one Month in Priſon; and on Decreet he ſhall not be liberate till he ſit one Hour betwixt

twixt 9 and 12 in the Day Time, at the Croſs, on the Dyvour's Stone, with a Bonnet and Hoſe, of partly brown, and partly yellow Colour, which he is to wear in all Time thereafter; and if he be found wanting, or diſguiſing the ſame, he is to loſe the Benefit of the *Bonorum*; and if the Magiſtrates Certificate be falſe, or the Dyvour not liberate in Manner foreſaid, he ſhall be liable for the Debt for which the Bankrupt is impriſoned; and the Lords will not diſpenſe with this Act, but when innocent Misfortune is libelled and proven.

July 8. 1688.

Protection.

That no Protection be granted on Account that the Perſon under Caption is a Witneſs, unleſs with the Petition therefore, there be given in a Declaration by the Party, at whoſe Inſtance he was cited, That he is a neceſſary Witneſs; and if at the Concluſion of the Cauſe the Citation ſeem colluſive, the Lords are to fine the Party Colluder.

Feb. 1. 1676.

Proteſtation, *ſee* Suſpenſion.

Proteſtation-Money.

That there be paid of Proteſtation-Money by each Suſpender that keeps up his Suſpenſion 8 *lib. Scots*, if the Sum charged for be under 100 Merks or within the ſame, or if above 100 Merks or not a liquid Sum 10 *L.* and for Remits againſt Raiſers of Advocation 15 *lib. Scots*.

July 4. 1661.

Proteſtation.

That wherever a judicial Proteſtation ſhall be admitted by the Ordinary, thro' the keeping up of Suſpenſions and Advocations, the Party ſhall not be reponed againſt the ſame, but upon Payment of 10 Shillings to the contrary Party: Nor ſhall Parties be reponed againſt Decreets finding the Letters orderly proceeded, pronounced for not diſputing the Reaſons of Suſpenſion and

Advo-

Advocation, but upon Payment of the like Sum. And that where a Purſuer before any inferior Court, advocates his Cauſe, and does not inſiſt within 15 Days after admitting of the Advocation, and cauſe call and give out the ſame, that immediately thereafter the Defender may call for the Advocation, and put up a Proteſtation; and the Clerks of the Bills are thereby ordained to give up all Proteſtation-Money conſigned in their Hands, without Payment of any Fee for the ſame. In this Act alſo there is Proviſion made, whereby the Defenders in Improbations may have Opportunities to make Productions, after extracting of the Act for the ſecond Term.

January 1. 1709.

Protutors.

Protutors who intromit with a Minors Eſtate, and act therein without a Right of Tutory or Curatory eſtabliſhed in their Perſons, declared liable as well for what they might have intromitted with, if they had been Tutors and Curators, as for what they ſhall intromit with *de facto*, ſicklike, and in the ſame Manner as Tutors and Curators are liable by the Law of this Kingdom.

July 10. 1665.

Pupil, *ſee* Curator,

Purſuer.

When Purſuers inſiſt not in Cauſes in the Outer-houſe, that the ſame be delete, and not continued till the next Week's Roll.

December 20. 1690.

****

Q.

Quote, *ſee* Teſtament.

Re-

R.

Regiſter of Saſines and Inhibitions, *ſee* Minute-Book.

Regiſters and Records.

THat all Clerks keep the principal Writs given in to them to be regiſtrate, and give forth only Extracts thereof, as before the 1651, and that the Clerk of Seſſion do once in two Year deliver the ſame to the Clerk Regiſter.

June 11. 1661.

The Clerks ordained to regiſtrate Writs, tho' an Advocate ſubſcribe not his Conſent; and all Extracts ſo given out ſince *November* laſt, declared warrantable.

Decem. 9. 1670.

Three Lords appointed to reviſe and receive the publick Regiſters from Sir *Archibald Primroſe* of *Carington*, late Lord Regiſter, and put the ſame in Order, and make an Inventar thereof. The Act proceeds on a Letter from the King.

July 4. 1676.

Report of the ſaids Lords, and Order to a Writer in *Edinburgh* to inventar all the Records of Parliament, Council, Seſſion, *&c.* and on *Carington*'s deponing, that the ſame Records in the Parliament Houſe and Caſtle, are without Embezelment as he received them, that an Act of Exoneration be extended in his Favour.

July 13. 1676.

Act ordaining the Perſons intruſted with the publick Records, their Oaths to be taken, that without Embezelment they are intire, and in the ſame Order as in the Inventary inſert in the Books of *Sederunt*, and ordaining the Keys of the laigh Parliament houſe, and Chamber in the Caſtle, where the Regiſters are, to be delivered to *Glendook* now Lord Regiſter; and ordaining Clerk *Gibſon* to compt to him for his Intromiſſion with the Profits of that Office.

Feb. 22. 1678.

That the Sheriffs of the Shires mentioned in the Act, meet within the Days therein preſcribed, and compare the Regiſters, conform to the Act of Parliament 1672, and report their Diligence; and that Letters of Horning be directed for that Effect, under the Penalties in the ſaid Act; and charging them to pay the Penalty already incurred for not comparing and reporting when ordered ſo to do by miſſive Letters from the Lords, dated 31. *July* laſt.

January 4. 1677.

That the Sheriff Clerks bring in their Regiſters of Horning to be markt by the Clerk-Regiſter, and that each Horning regiſtrate hereafter, bear in the marking thereof, the particular Leaf wherein it is regiſtred; and the Clerks diſcharged to write on Bills of Caption, whoſe Horning is not ſo marked; and that the Sheriff Clerk regiſtrate no Hornings, but againſt Perſons living within the Shire.

Novem 19. 1679.

Regiſtration.

That no Execution by Charge, Poinding or Arreſtment ſhall paſs upon Writs regiſtrate in the Town-Court Books of *Edinburgh*, or any other Town-Court Books within *Scotland*, unleſs ſuch Writ bear ſpecial Warrant for that Effect.

Decem. 10. 1713.

Decreet of Regiſtration.

That with booked Decreets of Regiſtration, the principal Writs decerned to be regiſtred be alſo kept. *Novem.* 21. 1676.

Regiſtring, *ſee* Bankrupt.

Renunciation and Grant of Redemption, *ſee* Inhibition.

Lord Reporter and Reporting.

That only two Lords report in one Day, and that they do the ſame in Order; and that the Rolls bear the Reports, and the

Time, and when Informations are given in; that they be marked on the Back who is Reporter.

Novem. 4. 1686.

But the Ordinaries on the Bills, and Outer-houſe, are underſtood to be ſupernumerary to the ſaids two Reporters.

Jan. 16. 1690.

That every Reporter the Night before give in a Note to each Box of the Cauſes he is to report next Day. See the Act in INFORMATIONS.

Novem. 29. 1690.

That in Cauſes to be reported, the Proceſs be brought to the Ordinary as follows, *viz.* Proceſſes taken to Interlocutor to be reported on *Tueſday*, to be brought to the Ordinary on *Wedneſday*, to be reported on *Thurſday*; and theſe on *Wedneſday*, to be brought to the Ordinary on *Thurſday*, to be reported on *Friday*; and theſe taken to Interlocutor on *Thurſday*, *Friday* and *Saturday*, to be brought to the Ordinary on *Monday*, to be reported on *Tueſday* or *Wedneſday* following, otherwiſe the Proceſs ſhall go to the Roll again.

Decem. 13. 1690.

The Lord on the concluded Cauſes ſhall report the Probation in Writing, and mark the particular Points of the Oaths or Writs inſiſted on. See the Act in concluded CAUSES.

Novem. 1. 1693.

Reproduction, *ſee* Proceſs.

Reſignation.

That all Reſignations hereafter, made in Superior's Hands, by the Uſe of any other Symbol than that of Staff and Baſton, ſhall be void and null.

February 11. 1708.

Retours, *ſee* Precepts.

Re-

Reverſion, *ſee* Inhibition.

That Magiſtrates of Royal Burghs, and their Succeſſors in Office, take ſufficient Caution of their Clerks, preſent and to come, that they ſhall inſert in their Books, all Saſines of Lands, Tenements, or Annualrents within their reſpective Burghs, within 60 Days after the Dates thereof; and in like Manner all Reverſions, Bonds for granting Reverſions, Renunciations, and Grants of Redemption, as is preſcribed by the Act of Parliament 1617, anent regiſtrating the ſaids Writs without Burgh; and that the ſaid Surety be under the Pain of any Damage that ſhall befal any Party, thro' Latency of the ſaids Writs, which ſhall be paſt by the Clerks, or preſented to them, to be inſert in their Books; and if Parties neglect to inſert the ſaids Writs, the Lords will hold them as latent and fraudulent Deeds, kept up to prejudge Purchaſers *bona fide*, and for onerous Cauſes.

Feb. 22. 1681.

Rights, *ſee* Competition.

Roll, *ſee* Purſuer.

All Decreets or Proteſtations, their Warrants are to be ſigned ere the Ordinary go off the Bench, and Interlocutors on Debate that Day or the following, ſave thoſe on *Friday* and *Saturday*, which are to be ſigned on *Monday* thereafter, otherwiſe the ſame ſhall not be ſigned, but the Proceſs is to go to the Roll again. See the Act in INTERLOCUTORS.

Decem. 13. 1690.

When Proceſſes taken to Interlocutor are not duly brought to the Ordinary in Order to be reported, the Proceſs is to go to the Roll again. See the Act in REPORTING.

Decem. 13. 1690.

That Cauſes delete be not inrolled again, till all the Cauſes inrolled before that was ſcored, be preſented, and the Ordinary ordained to give in to the Lords weekly a Liſt of the Cauſes ſcored, to be booked, to ly before the Lords, and that Proceſſes otherwiſe inrolled, may be objected againſt.

Novem. 8. 1695.

That to prevent the Abuſes concerning the Inrollment of Cauſes, the Keeper of the Books of Inrollment prefix the Arithmetical Numbers of 1, 2, 3, *&c.* to each Cauſe, as they ſtand inſerted in the Books of Inrollment, and that the Keeper preſent the Books of Inrollment at the firſt coming out of each Week's Ordinary, upon *Tueſday* Morning, that the Ordinary may ſign the Docquet ſubjoined cloſe to the Cauſes taken up upon the *Saturday* immediately preceeding.

Decem. 27. 1709.

Inner-houſe Roll, and Keeper thereof.

That all Cauſes coming in to the Inner-houſe ſummarly, without abiding the Courſe of the Roll, pay the ordinary Dues to the Keeper of the Inner houſe Roll, before they can be called; and that a Liſt of theſe Cauſes be affixed on the Wall weekly.

July. 23. 1696.

Keeper of the Outer-houſe Roll, *ſee* Suſpenſions.

S.

Sallary, *ſee* Penſion.

Sale, *ſee* Bankrupt.

Saſines, *ſee* Reverſions.

Seal.

THat the Seal for Sealing Writs that go out of the Country be made furthcoming to the Lords and Clerks, ſo oft as they have Uſe therefore. *Novem.* 26. 1663.

Seſſion and Parliament-houſe.

All Diſorder the laſt Day of the Seſſion in the Parliament-houſe or Cloſs diſcharged, under the Pain of Impriſonment for 3 Months; and the ſaids Perſons being Servants to any Member of the College of Juſtice, to be thereafter for ever debarred the Houſe; and, if

if they eſcape, their Maſters obliged to enter them to Priſon within 8 Days after their ſaid Diſturbance, under the Pain of 200 Merks; and Perſons guilty of the ſaid Miſdemeanor not belonging to the Houſe, to be impriſoned three Months, and baniſhed *Edinburgh*. *Feb.* 21. 1663.

Hugh Riddel ſent to the Plantations for cutting Silver Buttons off a Gentleman's Coat in the Outer-houſe, during the ſitting of the Lords. *July* 20. 1675.

Side-bar, *ſee* Bar.

Signet.

That the Keepers of the Signet and their Deputes for the Time, ſhall be careful that good and ſufficient Wax, fit to receive the Impreſſion of the Signet, guarded with a Ring of Paper upon the ſaid Wax, be uſed in all Time coming, to prevent the great Inconveniencies and Abuſes which the Want of an Impreſſion or Stamp upon the Wax might give Occaſion to. *Feb.* 14. 1706.

That all Summonſes, Letters and other Writs paſſing the Signet, ſhall bear the Day of the Month, and Year of God, in Words written at Length, and not in Figures, and underneath the ſame, theſe Words, *Signed by me*; To which the Keeper or his Deputes ſhall ſubjoin the ordinary Subſcription of his Name.

Solicitation.

All Solicitation diſcharged, and alſo all Information otherwiſe than by Write; and, if by Miſſives, theſe are to be ſhown to the haill Lords, except when allowed judicially, or before Auditors, when both Parties are to be heard, or at paſſing of Bills of Suſpenſion or Advocation before the Ordinary; or when by Conſent of Parties, or by the Lords Recommendation to accommodate any Proceſs, the Matter is referred. And the Contraveeners, Noblemen fineable in 300 Merks, Baron or Knight 200 Merks, and every other Perſon in 100 Merks for the Poor, attour Deprivation to Members of the College of Juſtice, and Dependers thereon; and declared a Reaſon of Declinator againſt any Lord, if he did not his utmoſt to prevent that Information. The Informations are by this Act to be delivered to the Lords Servants. *Novem.* 6. 1677.

When any Proceſs comes to be adviſed, if any of the Lords or others move that the Lords purge themſelves of verbal Information or Solicitation, that the ſame be done, and that Soliciters and verbal Informers be delete and puniſhed. *Decem.* 24. 1679.

That the foreſaids two Acts againſt Solicitation be printed and affixed on the Wall of the Outer-houſe; and that the ſaid Acts be obſerved in all Points; likeas, the Lords on their Honour have engaged to obſerve the ſame; and ordain this Engagement to be renewed each Seſſion. Subſcribed by the Lords at *Sederunt*. *Novem.* 11. 1690.

Stop, *ſee* Decreets.

Subſcription, *ſee* Advocates and Notars.

Summons, *ſee* Proceſs.

That Summonſes be fully libelled before they be executed, and a full Copy of the Libel given with the Citation; and that each of ſeveral Defenders ſhall receive a full Copy of ſuch Part thereof as concerns them *reſpectivè*, under the Exception of certain Actions mentioned in the Act. That with the Proceſs ſhall be returned the Defences both dilatory and peremptor in Writing, ſigned by the Party or his Procurator, which ſhall comprehend an Acknowledgement or Denial of the Facts libelled, otherwiſe they ſhall be held as acknowledged. That after the Return of the Proceſs, other Defences coming to Knowledge, or Writs which the Defender founds upon, and has in his Cuſtody, ſhall 48 Hours before Calling, be put into the Clerks Hands, for the Purſuer to ſee and peruſe the ſame; and in the Caſe of ſeveral Defenders, after the Proceſs is returned into the Clerks Hands by the Advocate, principally appointed to ſee the ſame, the ſame may be ſeen for the Space of Six Days by the Advocates for the other Defenders, who ſhall therewith return their Defences in Writing, and the Vouchers thereof. This Regulation which was declared by this Act of the 16. *February* 1723, to be of Force till the 15. *November* 1725, is continued till the 1. *January* 1728, and explained in ſeveral Particulars, by an Act of the 31. *December* 1725.

That all Summonſes in Uſe to abide Continuation, be continued

as

as formerly, and Acts extracted thereon, whereon Diligence is to follow, as before the 1651. *June 6.* 1661.

That in Place of ſecond Summonſes, the firſt contain two Diets and be ſubſcribed by the Clerk Regiſter his Depute, or any Clerk of the Seſſion, and pay ſuch Dues as the Summons and Letters paid when ſigneted apart. *July* 11. 1672.

Summons of *Bonorum*, *ſee Bonorum.*

Privileged Summons.

That all Summonſes be on 21 Days Warning, and none be privileged by the Lords Deliverance, except Removings, recent Spulzies, recent Ejections, where the Summonſes are execute within 15 Days after the Deed, Intruſions, and coming *in vice*, Cauſes alimentary, Exhibitions, Furthcomings of arreſted Goods, Transferrings, Poindings of the Ground, Wakenings, ſpecial Declarators, Suſpenſions, Prevento's, and Tranſumpts; and that recent Spulzies, Ejections, Intruſions and Succeedings *in vice*, be execute on 15 Days, and the reſt of the foreſaid Summonſes be execute on ſix Days, and that the ſecond Citation be alſo on ſix Days, and the Writers contraveeners fineable in 100 Merks for the firſt Fault, and Deprivation for the ſecond. The Act is not extended to Burghers and Suburbers in *Edinburgh*, who may be ſummoned by the ſecond Citation on 24 Hours.

July 21. 1672.

Supply, *ſee* Lords.

Suſpenſion, *ſee* Liberation.

When Suſpenſions are to be diſcuſſed on the Bill before Suſpenders be heard on their Reaſons, the Dues, as if the Suſpenſion were expede, ſhall be paid to the Clerk to the Bills or his Servant, for which he ſhall hold compt to the Regiſter.

January 24. 1679.

When Reaſons of Suſpenſion are to be diſcuſſed on the Bill, a Receipt of the Secretaries Dues ſhall be given on the Back of the Bill, or in a Paper apart, by the Keeper to the Signet, otherwiſe

at Calling, the Bill is to be refuſed, and the Letters ordered to be farder execute. *Novem.* 6. 1683.

When Reaſons of Suſpenſion or Advocation are to be diſcuſſed on the Bill, that the Secretaries Dues be paid to the Clerk to the Bills, and that a Receipt of the Keeper of the Books of Inroll-ment, his Dues, be ſhown within 24 Hours after the Clerk to the Bills receives the Warrant to diſcuſs, from the Clerk who wrote thereon, otherwiſe the ſame to be cancelled.

Novem. 11. 1691.

That with the Bill craving Warrant to diſcuſs Reaſons of Suſpenſion or Advocation on their Bills, ſhall be given in to the Lords a Recept by the Keeper to the Signet, of the Secretary's Dues, without which the Clerks are not to produce the ſame, and that the Deliverance bear the Production of the ſaid Receipt; and in Caſe of not Payment, the Warrant to be null. And Clerks to the Bills and Seſſion, diſcharged to take in Summonſes of Reduction unſignetted, either into Proceſs, or with Bills of Suſpenſion; and that Extracts of the Signet of Suſpenſions or Advocations, pay only 58 *Shill. Scots*; and that they be given out without Delay, on Payment, as ſaid is. And that hereafter Copies, or atteſted Doubles of Suſpenſions, be not holden as Principals in any Caſe, and the Clerks diſcharged to minute the ſame, and Extracters to extract any Act or Decreet in the Cauſe, unleſs the principal Letters, or Extracts thereof, off the Signet, be extant in Proceſs: And the Keeper of the Minute-book alſo diſcharged to hold any Copy or atteſted Double for a Principal, under Pain of being liable for the Damage to the Signet, and to the Lords for Contravention of this Act.

Novem. 30. 1692.

When Reaſons of Suſpenſion are referred to the Charger's Oath, if relevant, and he be preſent, the ſame ſhall be received, if abſent, that the Suſpenders Oath of Calumny be taken, That he has juſt Reaſon to propone the Reaſon of Suſpenſion, and he deponing *affimative*, or if abſent, the Bill to be paſſed with this Quality, That the Suſpender ſhall be liable to the Charger's whole Charges therethro', on Accompt to be given in by him on Oath, to be paid without Modification, if he ſuccumb in the Suſpenſion.

Feb. 29. 1688.

That

That hereafter, Bills of Suſpenſion be only preſented to the Ordinary on the Bills, who is to continue from *Tueſday* to *Tueſday* in the next Week, and that the ſaid preſenting be only by the Clerk; and the Ordinary may ſtop Execution for a Month after preſenting the Bill; and if the ſame be refuſed, that the Lord ſign it on the Back, and that it be kept by the Clerk; that if another be preſented to the Ordinary, any following Week on the ſame Grounds it may be ſtopped unleſs preſented to the whole Lords in Time of Seſſion, or Three in Time of Vacance: And further, when Bills are refuſed, that the Clerk mark alſo on the Back thereof what Inſtructions were produced.

Feb. 9. 1675.

When Bills of Suſpenſion are paſt, but no Caution found, the ſame ſhall only protect againſt Execution for 14 Days after the paſſing thereof, except the Ordinary on the Bills diſcharge the expeding of the Bill until a further Day, or allow the Suſpender a longer Time for expeding thereof, not above a Month from the Date of the Deliverance paſſing the Bill; which being elapſed, the Charger may proceed in Execution; and an indefinite Stop is to continue 14 Days after the Date of the Deliverance foreſaid, but Prejudice of Deliverances by the Lords in Preſence, when Suſpenſions are to be diſcuſſed on the Bill; and, in the mean Time, Executions diſcharged, in which Caſe Execution is ſtopped until the Cauſe be decided, or the Stop taken off. And the Clerk diſcharged to write the Date of any Deliverance of the ſaids Bills, but in Preſence of the Ordinary, and that it be the true Date whereon the ſame is ſubſcribed.

July 3. 1677.

That 14 Days be the only Time allowed for ſeeing and expeding Bills of Suſpenſion, and all other Stops, ſave when the Reaſons are to be diſcuſſed on the Bill, declared void; and that the Clerk keep a Minute-book of all paſt and refuſed Bills, to be patent to the Leiges *gratis*, and he, under his Peril, diſcharged to preſent a new Bill, after a former was paſt and elapſed; and Suſpenders on falſe or abſtracted Writs, to be condemned in large Expences attour Proteſtation-Money, in Caſe Proteſtation go out; and if Writes founded on, be not produced at diſcuſſing, they are to be holden falſe and forged, and the Forgers thereof to be inſiſted againſt, *November* 9. 1680; and that the Ordinary mark on the Back of the Bill, the haill Writs founded on, in the Reaſons

ſons of Suſpenſion; and that the Suſpender be not heard at diſcuſſing, if he produce not the ſame, but condemned in large Expences, beſides Proteſtation-money, the Writs being preſumed to be falſe; and that the Clerk retain Inſtruments of Notars, and Copies of Writs produced, they being alſo marked on the Back of the Bill, and may lend the ſame to the Charger, on Receipt, to be produced at diſcuſſing the Suſpenſion.

Novem. 11. 1691.

That with Bills of Suſpenſion on juratory Caution, an Inſtrument be given in, bearing the Day whereon he was to preſent the Bill, and that he intimated the ſame to the Charger perſonally, or at his Dwelling-houſe, if within this Kingdom; and the ſaid Bill is to be given in within ſix Days after the ſaid Day, or another Intimation to be made, and that the Ordinary before reporting the Bill in Time of Seſſion, or three Lords in Time of Vacance, cauſe publickly call the Charger before the paſſing of the Bill; and that the Suſpender depone whether he has Lands in Property, Wadſet Liferent, or Bonds, Tickets or Contracts, for Sums of Money; and that it be a part of the written Oath; and that the Party at Sight of the Ordinary conſign valid Diſpoſitions and Aſſignations thereof; and that no Bill bearing Offer of ſufficient Caution, be expede on *juratory Caution*, but that the ſame bear, on *juratory Caution*, that the Ordinary, before paſſing, may conſider the Reaſons of Suſpenſion more ſtrictly; and taking Oaths in Supplement by Commiſſion diſcharged; but that the Suſpender compear and depone before the Ordinary on the Bills, and that no Charge to ſet at Liberty be granted on juratory Caution.

Novem. 8. 1682.

No Suſpenſion to be granted on Arreſtments laid on after extracting Decreets, whether on Decreets or Dependences, but the ſame ſhall come in by Way of Double Poinding, and therein both Creditor and Arreſter may be called.

Feb. 1. 1677.

That in Suſpenſions of Proteſtations, the Deliverance of the Bill bear the ſame to be the ſecond, *&c.* Suſpenſion; and if otherwiſe expede at the Signet, the Lords will recal the Suſpenſion, as contrary to the Act of Parliament.

July 10. 1677.

Suſpen-

Suſpenſions of Charges for his Majeſty's Annuities or Exciſe, ould not paſs but by the whole Lords.

Decem. 6. 1677.

Anſwers to Bills of Suſpenſion in Time of Vacance, are to be iven in that Week, when the Lord to whom the Bill was pre-nted, is Ordinary, unleſs the Bill have been given in on *Friday* r *Saturday*, when the Anſwers ſhall be appointed to be given in n *Tueſday*, to be conſidered by the Ordinary the following Week. And as to Bills given in, in Time of Seſſion, that the Ordinary in whoſe Week they were given in, determine thereintil, without referring to any other Ordinary.

Novem. 11. 1691.

Written Anſwers to Bills of Suſpenſion or Advocation diſcharged, except where the Ordinary ſhall think fit to allow the ſame.

June 2. 1675.

That Cautioners in Suſpenſions ſhall not only be taken bound for what is contained in the Charge, but alſo for what Expences of Plea ſhall be decerned; and that the Atteſters of Cautioners ſhall not only be taken obliged for their Sufficiency at the Time of atteſting, but ſhall be bound as Cautioners for the Cautioner, and liable ſubſidiarly in their Order, as fully as the Cautioners themſelves; and that the Cautioner in the Suſpenſion ſhall be ſimply liable in his Order, whether the Decreet be turned into a Libel or not.

Decem. 27. 1709.

Suſpenſions.

That Bonds of Cautionries in Suſpenſions, be in all Time coming conceived alternatively, to pay or perform reſpectively to the Charger, or to ſuch, and to whom Payment or Performances ſhall be decerned to be made by the Decreet to follow on the ſaid Suſpenſion, to the End that other Parties than the Charger, compearing with their Intereſts at diſcuſſing, competing for preference, and preferred, may be thereby enabled to give a ſummar Charge on the Bond of Cautionry when thus conceived.

Novem. 23. 1717.

That the Ordinary on the Bills be authoriſed and impowered, whether in Seſſion Time, as well as Vacation, to grant Commiſſio

miſſion to take the Oath of an abſent Party, on any relevant Point alledged for the paſſing or refuſing Bills of Suſpenſion; and to allow a competent Time, not exceeding a Month, when granted by one Ordinary, nor two Months when granted by three Ordinaries for reporting the ſame, during which Time a Siſt is to be granted on the Bill.

Decem. 6. 1718.

T.

Taxes, *ſee* Lords.

Teſtament.

ORders for confirming of Teſtaments, which follow immediately in the Books of *Sederunt*, to the King's Inſtructions to the Commiſſars.

General Edicts ſhall be ſerved twice yearly, and particular Edicts granted when required, which being ſerved, and the Perſons having Right decerned, they ſhall give up Inventary on Oath; and when Wives die, the Husband muſt depone anent his Debts; and in Teſtaments datives, theſe Debts are only to be received as owing by the Defunct; Servants Fees for one Year preceeding the Defunct's Deceaſe, Duties of Lands or Teinds for one Year, Apothecaries Druggs immediately imployed before the Defunct's Deceaſe, Houſe Mails for Half a Year at moſt, Penſions and Miniſters Stipends, Steelbow Goods, and Corns to the Maſter. In a Teſtament, teſtamentary Debts given up by the Defunct, muſt be allowed; but if none be expreſly given up, but may be by the Defunct recommended to his Executors, then no Debts are to be allowed but the ſaid privileged Debts; and the Gear being divided according to Law, the Defunct's Part pays only Quote. Children *foriſfamiliat* get no Share of this Diviſion, and Confirmation muſt proceed notwithſtanding; and that it be adverted the Prices of Goods be not under or over the common Rate, in Prejudice of the Quote; the Oath of the Executors muſt be taken, and if Man or Wife ſurvives, what is omitted thereof, they probably know belongs to the Biſhop.

Licences ſhall only be granted where Sums are deſperate. The Procurator-fiſcal is to be confirmed, if the Perſons nominate, neareſt

neareſt of Kin, Creditors and Legataries ſeek not to be confirmed, Datives always being duly given thereto; and if after Dative, but before Confirmation, any Party deſire to be ſurrogate, they ſhall be Executors ſurrogate in Place of the Fiſcal, and Datives being given out, that the Debts may be better known, the Intromitters with the Defunct's Goods within the Juriſdiction, are to be called to give up Inventar thereof, who, if they compear not, Four or Five of the Defunct's Neighbours are to be ſummoned; who being ſworn, ſhall give up Inventary of the Dead's Goods, and declare the Quantity thereof, the Diviſion it comes under, and the Expence to be made thereon, ſhall be modified yearly at making of Accompts.

That the Procurator-fiſcal find Caution to make furthcoming to the Biſhop what Goods he intromits with, and ſhall compt yearly, and get 3 Shilling *per* Pound that he brings in and makes Payment of. That they take up all Defunct's Names within the Commiſſariot, and ſhall compt twice a Year for the Diligence to be done by him, in taking up, as ſaid is; and under Pain of Deprivation of their Office, ſhall not conceal Names of dead Perſons, tranſact or forbear to charge, or take Money for that Effect; all Executors nominate are to confirm within three Months at fartheſt.

If any decerned Executor compear not perſonally to depone on Teſtificate of a Miniſter, of his Inability or other reaſonable Cauſe of Abſence; with the Biſhop's Conſent, Commiſſion may be granted.

When an Edict is execute to a Day, and the Party crave a Day to give up Inventary, and confirm, ye ſhall continue the decerning the Party Executor till the ſaid Day, that all may be done *ſimul & ſemel*.

Teſtaments muſt make no Faith without Confirmation; an Eik ſhall not exceed the Third of the Inventary, without the Biſhop's Knowledge, and but once.

That the Inventars be given up as they were the Time of the Defunct's Deceaſe, and 12 *d.* of each Pound, ſhall be the Quoat of all Teſtaments, both great and ſmall, as well Dative as others, and the Quoat can only be mitigate by the Biſhop.

The Commiſſar Clerk ſhall have one Book for Teſtaments, markt by the Biſhop or his Clerk; and when that is filled up, he muſt get another, and another for Regiſtration. They and all that Court are to ſerve the Leiges thankfully at the Rates appointed by the

the Biſhop. The ſaids Inſtructions and Orders are approven and ſigned by *Jo. Nisbet. Jo. Baird.*

Transferring.

Summonſes of Transferring being ſeen and returned, may be called before the Ordinary in the Outer-houſe, and he proceed therein tho' not inrolled.

July 26. 1688.

Treaty, *ſee* Prize.

Tutor, *ſee* Curator.

W.

Wadſet, *ſee* Inhibition,

Wakening.

THAT Wakenings of Proceſſes be execute on 24 Hours against Perſons for the Time within *Edinburgh* or *Leith*, and on Six Days againſt all other Parties within the Kingdom, and on 15 Days againſt Perſons out of the Kingdom.

June 11. 1661.

All Proceſſes now ſleeping by the Surceaſe of Juſtice ſince *November* 1688, and which were not ſleeping before that Time for the Eaſe of the Leiges, are to be wakened by three blank Summonſes of Wakening for each Shire, which by edictal Citations at the Market Croſſes of the head Burghs of the Shires are to be execute againſt all Defenders on Six Days, and the Blanks to be filled up on a Note to be given in by the Purſuers to the Sheriff Clerks, with *6 ſhil. Scots* with each Note; and the ſeveral Executions ſigned by the Executor and Witneſſes, with the Summons, are to be tranſmitted to any Clerk of the Seſſion, who ſhall give the Executions to the Party, that he having expede a Copy of the ſaid blank Summons under the Signet, may put all in the Proceſs

ceſs: And where firſt Summonſes are given, but not the ſecond, that the ſecond be raiſed in King *W.* and Q. *M.* their Names; and if execute for both Diets, but not called, that the ſame be wakened by the ſaid edictal Citation. The Act is not extended to concluded Cauſes, they never having been in Uſe to be wakened; and but Prejudice to Purſuers to uſe the ordinary Way of Wakening.

Novem. 6. 1689.

Warrant to diſcuſs, *ſee* Suſpenſion.

Gratis Warrant.

That Petitions for *gratis* Warrants be particular as to the Cauſe wherein the Warrant is to be uſed, and that the Warrant be reſtricted conform, and endure only three Years, unleſs renewed.

Novem. 20. 1686.

Witneſſes.

That the Ordinary, who examines Witneſſes, immediately after Examination ſet down on the Act or Warrant for examining, the Names of the Witneſſes examined by him, and ſubſcribe the ſame, otherwiſe the Lords will not regard the Depoſitions not being ſo marked and ſigned.

July 7. 1688.

Writs, *ſee* Extracts.

That all Writs in Uſe before 1652, to be written in *Latin*, be for hereafter written in that Language.

June 5. 1661.

FINIS.